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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 986.

THE LOUISIANA NATIONAL BANK, GARNISHEE, PLAINTIFF IN ERROR AND APPELLANT,

vs.

MRS. HATTIE L. WHITNEY, NATURAL TUTRIX OF W. W. WHITNEY, M. G. WHITNEY AND ZULIEME WHITNEY, HEIRS OF MYRA CLARK GAINES, DECEASED, ET AL.

No. 987.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, APPELLANT,

vs.

MRS. HATTIE L. WHITNEY, NATURAL TUTRIX OF W. W. WHITNEY, M. G. WHITNEY AND ZULIEME WHITNEY, HEIRS OF MYRA CLARK GAINES, DECEASED, ET AL.

IN ERROR TO AND APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 13, 1886.

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a *Transcript of Record.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

LOUISIANA NATIONAL BANK, Garnishee, Plaintiff in Error,
vs.
MYRA CLARK GAINES, CITY OF NEW ORLEANS, THE BOARD of Liquidation of City Debt, John Klein & Co., and The New Orleans Gas-Light Co., Defendants in Error. } No. 8825.

H. C. Miller, Esq., for plaintiff in error. Messrs. A. Goldwhaite and Thos. J. Semmes, for defendants in error.

Transcript of Record.

LOUISIANA NATIONAL BANK, Garnishee, and THE BOARD OF LIQUIDATION OF CITY DEBT, Appellants,
vs.
MYRA CLARK GAINES, THE CITY OF NEW ORb leans, John Klein & Co., and the New Orleans Gas-Light Company, Appellees. } No. 8825.

H. C. Miller, Esq., for appellants. Messrs. A. Goldwhaite and Thos. J. Semmes, for appellees.

Writs of error and appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, 1886.

1 UNITED STATES OF AMERICA:

United States Circuit Court, Fifth Circuit *Court* and Eastern District of Louisiana.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

Fi. fa. Issued May 22d, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded that you demand according to law of The City of New Orleans the sum of one million nine hundred and twenty-five thousand six hundred and sixty-seven $\frac{83}{100}$ dollars, with interest on $950,110.00 at the rate of 5% per annum from the 10th

January, 1881, until paid, and the further sum of thirty-four
2 thousand dollars, with interest thereon at the rate of 5% per annum from the 10th day of January, 1881, until paid, and the costs of suit, viz:

Clerk's costs	$66 60
Attorney's fees, docket	20 00
" " depositions	

And your costs and charges, and also the fees of the master and the examiners herein, cash, which Myra Clark Gaines lately recovered by a decree of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, and if the same be not paid on demand that then you cause the same to be made out of the personal estate of the said city of New Orleans in your district, if sufficient personal estate can be found therein, but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said City of New Orleans in your district, and that you have those moneys before our said court to render to the said Myra Clark Gaines for the judgment
3 aforesaid on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 22d day of May, A. D. 1883, and 107th year of the Independence of the United States.

[SEAL] (Signed) F. A. WOOLFLEY, *Clerk.*

Endorsed on back: Decree. M. B. 32, fo. 105. No. 8825. U. S. circuit court, eastern district of Louisiana. Myra Clark Gaines *vs.* City of New Orleans. *Fi. fa.*

Returned & filed August 1st, 1883.
Copy furnished.
Copy requested.
(Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received May 23rd, 1883, by the U. S. marshal and proceeded to make demand of the City of New Orleans, through Hon. W. J. Behan, mayor of the city of New Orleans, for the satisfaction of this writ, when the said mayor, W. J. Behan, answered me that the City of New Orleans had neither money or property to satisfy this
4 writ in whole or in part. I also did, on the 29th day of the same month and year, make a seizure by garnishee process in the hands of the Louisiana National Bank, in the hands of the New Orleans National Bank, in the hands of W. J. Behan, mayor, and in the hands of B. T. Walshe, treasurer of the city of New Orleans, the whole, as will more fully appear by reference to the annexed notice of seizure, marked "A," which, together with the return thereon written, is made a part of this return. From said seizure nothing has as yet come into the marshal's hands. No other property found after due demand made of the attorney of plaintiff.

This writ expiring before a final disposition of the seizure by garnishee process above referred to had been made, and an appeal herein having been taken by garnishees, to which reference is made, I make this return and request the clerk of this hon. court to furnish me with a copy of this writ and return thereon in conformity to law.

Returned July 31st, 1883.

(Sig'd) EDW. S. WURZBURGER,
Deputy Marshal.

5 *Supplemental Petition and Interrogatories to Garnishees. Filed May 29th*, 1883.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The supplemental petition of Myra Clark Gaines respectfully showeth that upon the judgment obtained in this case for the sum of one million nine hundred and twenty-five thousand six hundred and sixty-seven $\frac{83}{100}$ dollars costs petitioner has issued a *fi. fa.*, and having reasen to believe that the Louisiana National Bank, the New Orleans National Bank, B. T. Walshe, city treasurer and individually, and W. J. Behan, mayor of the city of New Orleans and individually, third persons, are indebted unto the said defendant in execution or have property or effects in possession or under control belonging to the said debtor, or are indebted to said debtor, petitioner has caused the seizure to be made in the hands of said third person.

6

Therefore petitioner pray- that said The Louisiana National Bank, The New Orleans National Bank, B. T. Walsh, city treasurer and individually, and W. J. Behan, mayor and individually be cited and ordered to answer under oath the annexed interrogatories, and after due proceedings condemned to pay the amount of said judgment and costs.

(Sig'd) WM. REED MILLS,
A. GOLDWHAITE &
J. WARD GURLEY, JR.,
Sol'rs for Compl't.

Interrogatories.

1st interrogatory. Had you in your hands or under your control, directly or indirectly, at the time of the service of notice of seizure in this case, or since, or at the time of service of these interrogatories, or at any time since, or at the time of answering these interrogatories, any money, rights, credits, or other property whatsoever, directly or indirectly, belonging or due to the said defendant in execution, or in which she has or had any direct or indirect interest for the whole or for a part, or otherwise; and, if yea, what is the

nature, description, and amount thereof; and is the same not sufficient to pay or satisfy the full amount of said judgment and costs; or, if less, to what amount?—you being asked and required to make a full disclosure in relation to the same.

2d interrogatory. Were you not at the time of service of notice of seizure upon you in this case, or since then, or at the time of service of these interrogatories, or since, or at the time of answering the same, directly or indirectly, indebted or obligated unto the said defendant in execution for anything, or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale, or exchange, or transfer, or assignment, or payment, or novation, or compensation, or letting, or hiring, or service, or labor, or employment, or affreightment, or insurance, or job, or work, or rent, or interest, or partnership, or loan, or deposit, or trust, or bailment, or agency, or suretyship, or compromise, or pledge, or in consequence of any contract or obligation whatever, whether the same be due or to become —, and whether the interest of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same not sufficient to pay or satisfy the full amount of said judgment and cost; or, if less, what amount?—you being asked and required to make a full and detailed disclosure in relation to the same.

3d interrogatory. Have you at any time since the service of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in execution, any payment, or novation, or compromise, or arrangement, or given her any note or other written obligation, or received from her, directly or indirectly, any receipts or acquittance, or received or required against her, directly or indirectly, any compensation, or set-off, or demand, or note, or other obligation or right of action? And, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

7 4th interrogatory. Have you in your possession or under your control, particularly, the forty thousand dollars received from the Louisville and Nashville R. R. Co., in 1882, in compromise of suit pending between the City of N. O. & the L. & N. R. R. Co.?

Let the within supplemental petition be filed, and let the Louisiana National Bank, the New Orleans National Bank, B. T. Walsh, as city treasurer, and individually, and W. J. Behan, as mayor, and individually, be made garnishee herein, and cited to answer the accompanying interrogatories, under oath, in writing, and as the law directs, as herein prayed for.

New Orleans, May 29th, 1883.

(Sig'd) EDWARD C. BILLINGS, *Judge.*

Citation. Issued May 29th, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

8 MYRA CLARK GAINES *vs.* CITY OF NEW ORLEANS. } No. 8825.

To the Louisiana National Bank, garnishee:

You are hereby cited to declare, on oath, what property or effects belonging to the defendant in this case you have in your possession or under your control, or in what sum you are indebted to said defendant, and also to answer, in writing, under oath, the interrogatories annexed to the petition, of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city
9 of New Orleans, this 29th day of May, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 107th year.

Teste:

[SEAL.] (Sig'd) F. A. WOOLFLEY, *Clerk.*

Indorsed on back: No. 8825. United States circuit court. Myra C. Gaines *vs.* City of New Orleans. Copy of petition, interrogatories, and citation to be served on Louisiana Nat'l Bank, garnishee.

Received May 29, 1883, by the United States marshal, and on May 29th, 1883, I served a true copy of the within citation and the accompanying supplemental petition of plaintiff, with interrogatories and order of court thereof, together with notices of garnishee, on the Louisiana National Bank of New Orleans, garnishees
10 herein, by handing the same to Joseph H. Ogleby, Esq., in person, in the city of New Orleans, the president of the aforesaid national bank.

(S'g'd) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.

By E. S. CURRY,
D'y U. S. Marshal.

Answers of W. J. Behan, Mayor, to Garnishee. Filed June 7th, 1883.

Circuit Court of the United States, Fifth Circuit & Eastern Dist. of La.

MYRA C. GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

And now appears W. J. Behan, mayor of the city of New Orleans, in his said capacity and individually, and for answer to the interrogatories herein propounded says as follows:

To int. first he answers: No.

To int. second he answers: No.

To int. third he answers: No.

To int. fourth he answers: No.

And further, generally answering and qualifying the foregoing answers, he says that -either individually nor as mayor has
11 he possession or control of any property credits or money of the city of New Orleans; that the funds, moneys, and revenues of the city of New Orleans are deposited to her credit, according to law, with the fiscal agent, an incorporated bank, from which it may be withdrawn on the joint check of the mayor, the treasurer, and the comptroller, but no check can be drawn against said moneys, except in execution of the orders of the city council or the payment of appropriations made by resolution or ordinance of the council. And for answer and explanation of his answer to int. fourth, relative to a certain sum of forty thousand dollars paid to the city of — by L. & N. R. R. C. under ord. 8079, A. S., deponent refers to and adopts as his answer that of B. T. Walshe, city treasurer, this day filed, and which he has read. And further deponent saith not.

12 (Signed) W. J. BEHAN.

Sworn to and subscribed before me this June 7, '83.

[SEAL.] W. D. HART,
Not. Pub.

Answer of the Louisiana National Bank, Garnishee. Filed June 8th' 1883.

U. S. Circuit C't.

MYRA CLARK GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

Now comes Joseph H. Oglesby, the president of the Louisiana National Bank, and answers as follows to the interrogatories propounded to said bank as the garnishee herein:

To the first interrogatory affiant answers: No, save and except, as hereinafter stated, at and prior to the date of the service of the interrogatories herein, there was and is still on deposit in the Louisiana

National Bank to the credit of and subject solely to the con-
13 trol of *and subject solely to the control of* the board of liquidation of the city debt, created under the act No. 133 of the Legislature of Louisiana, applicable only to the purposes hereinafter stated, the sum of nineteen thousand one hundred dollars, all of which sum is derived from the premium-bond taxes levied by the city of New Orleans, in accordance with the act No. 31 of 1876, to provide for the principal and interest of the premium bonds of the city and premiums thereon included in the several allottments of series of said bonds and premiums fixed for payment and redemption for the current year 1883 by the ordinances adopting the premium-bond plan and said act; the amount of said bonds and premiums to be paid and redeemed from and out of said taxes during the current year, being six hundred and eighty-two thousand seven hundred and fifty dollars of bonds and one hundred thousand dollars of premiums; said premium bonds now extant and held by holder for value, and amounting to and constituting eight
14 millions five hundred thousand dollars of the bonded debt of this city, and all of said amount now on deposit, as well as all the residue of said premium-bond tax levied for the current year and yet to be collected, being absolutely required for the payment of the said series of premium bonds, interest, and premiums fixed by said act and plan for redemption during the current year, the surplus, if any, to be devoted to the purchase of outstanding bonds, said amount now being deposited (in the said Louisiana National Bank, the fiscal agent of the board, and held by this board, as directed by said act No. 31 of 1876, act No. 58 of 1880, and the act No. 133 of 1880) solely for the said purposes directed by said act of 1876, and especially the 6th section thereof, said acts being specially referred to for fuller explanation and greater certainty, and no portion of said sum is applicable to pay the judgment of the plaintiff herein, but all said amount now on deposit is absolutely exempt and protected from any seizure by the creditors of the city, because derived from and constituting said public taxes essential to carry on the government, levied and exclusively applicable
15 to pay the bonded debt of the corporation, as herein stated, one of the chief objects for which municipal government is established and taxes are imposed.

Further answering, affiant says that at and prior to the date of the service of the interrogatories herein there was, and is still, deposited in the said Louisiana National Bank the sum of fifteen thousand three hundred dollars, all of which said sum is derived from and constitutes the taxes of the city of New Orleans, levied under the laws, to defray the expenses of the police, the public schools, the lights of the city, the salaries of the officers of the city government, and for other expenses of maintaining and carrying on the government of the city; all said sums being absolutely required for the aforesaid expenses of the municipal administration is drawn upon daily for the current wants of the government, and no part of said sum is liable to seizure under the plaintiff's execution, because derived from and forming the public taxes levied and re-

16 quired to support and carry on the municipal government, and is its alimony.

To the second interrogatory this affiant answers: No, save and except as is stated in the answers to the first and fourth interrogatories.

To the third interrogatory affiant answers: No.

To the fourth interrogatory affiant answers: At and prior to the date of service of the interrogatories herein there was, and still is, deposited in the said Louisiana National Bank the sum of forty thousand dollars, received by the city of New Orleans from the Louisville and Nashville Railroad Company, under the agreement herewith filed and made part hereof as Exhibit "A," that the city should ratify and confirm to the New Orleans, Mobile and Texas Railroad Company, reorganized, and to the Louisville and Nashvill Railroad Company for said sum of $40,000.00, the grants to the New Orleans, Mobile and Chattanooga Railroad Company by the acts of the Legislature
17 of Louisiana, No. 26 of 1869 and No. 31 of 1870, and other acts, of certain batture property of the city, set forth in said acts of 1869 and 1870, should acquiesce in the judgment rendered by the U. S. circuit court, maintaining said grants, in the suit of *of* the New Orleans, Mobile and Texas Railroad Company *vs.* The City, and should dismiss the appeal taken by the city from said judgment, then and now pending in the Supreme Court of the United States, all of which more fully appears by said legislative acts, said judgment, and said agreement, specially referred to for fuller explanation and greater certainty, and it was for the consideration that the city would confirm said grants, acquiesce in said judgment, and dismiss said appeal; that said sum now on deposit was paid, but the said city has not fulfilled said agreement and secured to the company the consideration aforesaid, because as soon as said agreement became known the board of liquidation of the city debt, created under the act No. 133 of 1880 with the powers defined in said act,
18 specially referred to for fuller explanation and greater certainty, on the 15th October, 1882, intervened in said suit an appeal to the United States Supreme Court, opposed the dismissal of said appeal, and asserted its right to the property of the city sought to be granted by said acts of 1869 and 1870, said property being, to the extent shown by the sketch B, herewith filed as part hereof, being squares of ground of this city, not dedicated to public used, conveyed to said board of liquidators by said said act of 1880 and by the later act of 1882, number 58, also specially referred to for fuller explanation and greater certainty, to be sold and applied by the board to pay the bonded debt of the city, which opposition was maintained, and the dismissal of the appeal which the city had undertaken to effect under said agreement was denied by the Supreme Court of the United States, its order being that the appeal be maintained until the proper suit to test the validity of said agreement under which the *suit* $40,000 was paid should be
19 brought and prosecuted to judgment by the board; all of which more fully appear by said order of the Supreme C't, herewith filed as part hereof, marked Exhibit C.

And this affiant, further answering, shows that in accordance with said order the board of liquidation is now prosecuting said suit to have said property, the subject of said grants and of said agreement, decreed to be the property of the board for the purposes of the trust created by said acts of 1880 and of 1882 to be recognized as entitled to prosecute said appeal and to have said agreement decreed to be void and of no effect for and because the city had no capacity to deal with said property as it proposed in said agreement, but that the board alone had the power of sale thereof to pay the bonded debt; for that purpose and to that end was vested with sole control of said property when the city undertook in said agreement to confirm to said company the grants of said property to acquiesce
20 in the judgment maintaining the grants and to dismiss the appeal from said judgments, which suit is No. 10180 of the docket of this court; to the pleadings in which, to show the issues involved, special reference is made for fuller explanation and greater certainty.

Affiant, further answering, shows that prior to the service herein of the interrogatories the city council had under consideration the said agreement of compromise with a view to legal proceedings to set it aside, and resolutions to that effect have been introduced in that body, as appears by copy of said resolution herewith filed, marked "D;" that by reason of said proceedings by the board the said forty thousand dollars has not been used by the city, has been, since 15th October, 1882, and is now, still deposited in the said Louisiana National Bank to abide the issue of said legal proceedings touching said agreement; that the city has answered in said suit by the board that it holds said funds subject to the decision thereon,
21 to be returned to the said Louisville and Nashville Railroad Company in the event said agreement should be annulled by the decree in said suit; and affiant shows that said agreement under which said forty thousand dollars was received by the city, not having been fulfilled by the city, resolutions being pending before the city council to authorize proceedings by the city to set aside said agreement of compromise, and the validity of said compromise being at issue in said suit by the board, the said sum is not subject to seizure under plaintiff's execution, but must remain on deposit to abide the decision in said pending suit, which, if against said agreement, will determine the city never had any right to said fund or to receive it.

Affiant, further answering, shows that said acts No. 133 of 1880, and said act No. 58 of 1882 make a destination of all property of this city to the payment of its bonded debt, now exceeding fourteen million dollars; that the said fund of forty thousand dol-
22 lars would be controlled by said destination and would not be subject to seizure for the debts of the city, even if said agreement of compromise were maintained in said suit and the fund retained by the city, and, save and except as above stated, this affiant answers No to the said fourth interrogatory.

(Signed) J. H. OGLESBY.

Sworn to & subscribed before me this 8th June, A. D. 1883.
(Sig'd) J. A. CHARBONNET,
Comm'r U. S. Cir Court, E. D. of La.

EXHIBIT A.

Filed June 8th, 1883. Filed with answer of Louisiana National Bank, garnishee.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Be it known that on this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, before
23 me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Joseph H. Shakespeare, mayor of the city of New Orleans, herein acting in such capacity under and by virtue of the authority in him vested by ordinance No. 8079, administration series, adopted by the council of the city of New Orleans at a meeting held on this eleventh day of October, A. D. 1882, a duly certified copy of which is annexed to this act and incorporated as part hereof, who declared that he acknowledges to have received from Thomas L. Bayne, Esq., attorney for the Louisville and Nashville Railroad Company, and for it and the New Orleans, Mobile & Texas Railroad Company, reorganized, the sum of forty thousand dollars, and for and in consideration of said sum the City of New Orleans does, by these presents, compromise and settle all of the matters in controversy, and the
24 suit of the City of New Orleans *versus* The New Orleans, Mobile and Texas Railroad Company, now pending in the Supreme Court of the United States, on appeal by the City of New Orleans from the judgment of the circuit court of the United States, rendered on the eleventh day of June, 1878, affirming the judgments of the supreme court of Louisiana and of the eighth district court of the parish of Orleans in favor of said railroad company, dismissing the appeal, acquiescing in the judgments rendered in favor of said company, and confirming and securing to the New Orleans, Mobile and Texas Railroad Company, reorganized, and the Louisville and Nashville Railroad Company the rights, grants, occupancy, and privileges heretofore granted by the City of New Orleans, and grants made and confirmation of the same by the State of Louisiana by acts of the Legislature, No. 28 of 1868, Nos. 26 and 67 of 1869, and No. 31 of 1870, all as set forth in the proportions recited in the preamble to the above-mentioned and annexed ordinance,
25 No. 8079, as and in said ordinance, hereby making full compromise and settlement and granting and confirming all the rights and privileges therein described; and also personally came and appeared herein the said Thomas L. Bayne, attorney of and for said railroad company, and in the name and on behalf of said companies accepts the same.

Thus done and passed at the city of New Orleans, in the presence

of E. L. Bower and A. E. McConnell, competent witnesses, residing in said city, who hereunto subscribe their names, together with the said appearers and me, notary, the day, month, and year first above written.

Original signed:

JOS. A. SHAKESPEARE, *Mayor.*
THOS. L. BAYNE.
SAM'L FLOWER,
Notary Public.

E. L. BOWER.
A. E. McCONNELL.

I hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in my office.

26 New Orleans, June 7, 1883.

(Signed) SAM'L FLOWER, [SEAL.]
Notary Public.

Endorsed on back: October 11, 1882. Compromise and settlement [of the] City of New Orleans with Louisville & Nashville R. R. Co., and N. O., M. & T. R. R. Co. (reorganized). Registered C. O. B'k 116, folio 557. Samuel Flower, notary public.

27 EXHIBIT "B."

Filed June 8, 1883. Filed with answer of Louisiana National Bank, garnishee.

See plan attached.

(Here follows map marked p. 27.)

[Endorsement on map:] No. 8825. U. S. circuit court, eastern district of La. Gaines *vs.* City of N. O. Filed with answer of Louisiana National Bank, garnishee, June 8th, 1883. F. A. Woolfley, clerk.

28 EXHIBIT C.

Filed June 8th, 1883. Filed with answer of Louisiana National Bank, garnishee.

Supreme Court of the United States. October Term, 1882.

THE CITY OF NEW ORLEANS, Appellant,
vs.
THE NEW ORLEANS, TEXAS & MOBILE RAILROAD COMPANY. } No. 17.

On motion, Mr. Chief Justice Waite delivered the opinion of the Court:

This case was continued on the application of the parties on the 10th of October. The appellee now presents a stipulation for the dismissal of the appeal, signed by the city attorney of New Orleans pursuant to the terms of a compromise of the matter in dispute made with the city council, and asks to have the appropriate order

entered upon that stipulation. The board of liquidation of
29 the city debt of New Orleans appears to resist the entry of any such order on the ground that, during the pendency of the appeal in this Court, authority over the subject-matter of the controversy has been transferred from the city council to that board, and that the compromise which has been effected is not binding.

The board also asks permission to prosecute the appeal in the name of the city.

It is conceded that the city council made the compromise which is claimed, and that the appellee is entitled to a dismissal of the appeal if the council had authority to do what it has done and the compromise was fairly made. The dispute is as to the authority of the council, and presents questions too important to be settled summarily on these motions.

It is therefore ordered that the cause and pending motions be continued until the next term, and that the appeal be then dismissed in accordance with the stipulation on file, unless the board of
30 liquidation begin and prosecute without unnecessary delay, in some court of competent jurisdiction, an appropriate proceeding to set aside the compromise which has been made with the city council.

EXHIBIT "D."

Filed June 8th, 1883. Filed with answer of Louisiana National Bank, garnishee.

City Council.

A short session of the city fathers last night.

The offer of compromise made by Mrs. Gaines returned to the council without action and an ordinance introduced repealing the $40,000 railroad compromise.

The city council held its regular weekly meeting last night, Mayor Behan in the chair and a quorum present.

After the reading of the minutes the report from the mayor was read.

Herewith transmitted for your consideration are the following:

The weekly report of the treasurer; a communication from Messrs. A. A. Maginnis' Sons, the Crescent City Sugar Refining Com-
31 pany, the Lafayette Warehouse Company, and A. Thomson petitioning for permission to place a connecting railway track on Commerce street; a communication from 48 property-owners on Prytania street petitioning for the paving of Prytania street from Calliope to Louisiana avenue with compressed asphalt block paving; a communication from seven property-holders on St. Charles avenue, as a committee representing themselves and others, relative to the bonds of contractors for the paving of St. Charles avenue.

Reports.

The finance committee reported in regard to the comptroller's opening of bids for the paving of St. Charles street; also found

correct comptroller's weekly report and treasurer's weekly report; return without action a communication from Messrs. Beckwith & Farrar; also without action the offer of Mrs. Gaines relative to her claims.

Committee on public improvements: Favorably on petitions of the City Railroad Company to remove blacksmith shop; of Norton & Manning to erect a steam-engine, and an ordinance granting
32 permission to H. Loubat to erect a steam-engine at No. 22 Bienville street.

Committee on budget reported, submitting an ordinance relative to levying a tax for the year 1883; recommend the consideration of the petition of Gustave Kuhn to be referred to committee No. 42.

Unfavorably on the petitions of Mrs. Clancy, James Molloy, J. J. Dillon, Mrs. Joseph Scott, and L. B. Jannin relative to reduction of assessments.

From the comptroller relative to receiving the bids of the Barber Asphalt Paving Company.

The committee on police and public buildings reported favorably an ordinance granting to John Larrieux permission to erect a refrigerator in the fifth district market; unfavorably on the petition of Ferdinand Lafon asking return of $15 for cows impounded.

The committee on public health reported that there is no source from which to draw funds to assist the Auxiliary Sanitary Association.

The committee on public order reported favorably on the communication of the comptroller relative to the leave of absence
33 granted B. A. Watkins and the appointment of Theodore Brierson to act in his place; also, favorably on Brierson'- bond of $10,000.

A report was received from the committee of St. Charles-street property-holders protesting against the acceptance of the bonds offered by the Barber Asphalt Paving Company.

The examining committee on city police reported the dismissal from the force of Patrolman C. Jackson and the fining of several others.

Petitions.

The following petitions were read and referred to the proper committees:

From property-owners on Prytania street, asking that the street be paved from Calliope St. to Louisiana avenue with block asphalt.

From Magennis' Sons and others, requesting permission to lay a connecting track on Commerce street, between St. Joseph and Notre Dame.

From the Enterprise Ice Manufacturing Company, asking permission to erect buildings and machinery at the corner of Peters and Pauline streets.

34 From Washington Steam Fire Company No. 20, asking to have their engine-house repaired.

From W. S. Saiter, asking a reduction of his theatre license.

From citizens on St. Charles, between Harmony and Toledano streets, to have the square paved with block asphaltum pavement.

A petition from Mr. Van Benthuysen, president of the Crescent City Railroad Company, asking an extension of the Annunciation street line down Chartres street, was taken up and postponed indefinitely, it being the sense of the council not to grant any right of way down Chartres street to railroads.

Communications.

From M. C. Randall, relative to certain complaints regarding the Washington-street cemetery. Referred to the health committee.

From the New Orleans Auxiliary Sanitary Association, relative to the condition of the Carondelet Navigation Company's Canal.

Ordinances Passed.

An ordinance granting John Larrieux permission to erect
35 a refrigerator in the St. John market.

An ordinance by Mr. Grady granting permission to H. Loubat to erect a steam-engine on his premises, No. 22 Bienville street.

By the committee on fire department: An ordinance appropriating $5,000 to the Gamewell Fire-Alarm Telegraph Company.

By the committee on estimate of expenses: An ordinance to amend ordinance No. 305, striking out the words: "Provided the said Female Orphan Society or Poydras Asylum pay costs of court and cancellation of said judgments or mortgage inscriptions."

An ordinance creating a board of commissioners to be intrusted with the improvements, etc., of Esplanade street, and appointing [the] following gentlemen as members of said board: Albert Baldwin, George Dunbar, L. Godchaux, Ar. Hopkins, A. Dehaille, J. M. Seixas, Capt. J. W. Tobin, Aug. Tete, Dr. John H. Pike, Pierre Lanaux, Jules Aldige, and Armand Pilie.

New Business.

Under this head the following motions were offered and passed:

36 Granting the clerk of the council 40 days' leave of absence, providing he put in his place some competent person.

By Mr. Fitzpatrick: That the Illinois Central Railroad Company be allowed to receive and embark the Continental Guards, at the corner of Camp or St. Charles and St. Joseph, on the day of their departure for their northern trip.

By committee on streets and landings: Directing the comptroller to advertise for bids for the paving with square block stones Decatur between Conti and Bienville streets.

By Mr. Booth: That, with a view to amend the St. Charles-avenue specifications, the city surveyor is hereby instructed to report to the council at its next sitting what proportion or length of the upper avenue on one side would have to be omitted, with and without the

city being held responsible as owner of the middle ground on financial account, in order to secure on this line not less than 34 feet, both sides, to Louisiana avenue, and thence not less than 30 feet to Napoleon avenue, one side, and thence not less than 28 feet to Carrollton, one side; also to secure the asphalt pavement at the
37 intersection to the property lines; also in the matter of suggested improvement in drainage.

Ordinances.

The following ordinances were read for the first time and laid over:

By Mr. Booth: An ordinance to further carry out the effect and spirit of ordinance No. 100, C. S., relative to unpaid and underpaid licenses.

By Mr. Booth: That in the event of lease, alienation, or transfer, or sale, in New York or elsewhere, by the Elevated Railroad Company of the privileges granted said company in ordinance No. 215, C. S., said lease or sale shall not carry with it the right of delivery in fee of said privileges except as limited by sections Nos. 1, 7, and 9 of said ordinance, and that the city shall be paid her share before the council shall give consent, as stipulated in section 9.

Referred to committee of public order.

By committee on budget and expenses: That a tax of 2 per cent. on the assessed valuation of all property subject to taxation within the city limits, as per assessment-rolls, be, and is hereby, imposed.

38 By the committee on public order: That ordinance No. 8079, A. S., adopted October 11th, 1882, authorizing and directing the mayor of the city of New Orleans to accept the proposition made to compromise and settle with the New Orleans, Mobile and Texas Railroad Company certain matters of controversy, by which the city agreed to dismiss an appeal in the case of The City of New Orleans *v.* The New Orleans, Mobile and Texas Railroad, No. 144 of the docket of the Supreme Court of the United States, and the same is hereby repealed, and the contract signed, rescinded, and declared null, and the $40,000 received by the city shall be restored to the said company, and if the company refuse to accept such tender that such legal proceedings as may be necessary shall be instituted.

Leave of absence was granted for 45 days to Mr. John Fitzpatrick, commissioner of public works.

Mr. Fitzpatrick notified the council that he had granted leave of absence for 45 days to Mr. Wm. Pierce, wharfinger, which was approved.

Councilman Patorne asked a leave of absence for three months.

The council then adjourned.

39 *Answers of B. T. Walshe, Treasurer, &c., to Garnishment. Filed June 8th,* 1883.

Circuit Court of the United States, Fifth Circuit and Eastern Dist. of La.

MYRA C. GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

And now appears B. T. Walshe, as treasurer of the city of New Orleans and individually, and for answer to the interrogatories herein propounded, *to* say- as follows:

To int. first: No, except as hereinafter explained.
" " second: No, except as hereinafter explained.
" " third: No, except as hereinafter explained.
" " fourth: No, except as hereinafter explained.

And for further answer, explaining and qualifying the foregoing, he says that neither individually or as treasurer has he possession or control of any property, money, or credits belonging to the city of New Orleans; that as treasurer it is his duty to deposit all moneys, revenues, funds, etc., coming into his hands with
40 the fiscal agent of the city of New Orleans, an incorporated bank, to the credit of the city, and after such deposit he has no control over it, except that under the law same can be withdrawn on the joint check or order of affiant, the mayor of the city of New Orleans, and the comptroller, but no such check can be drawn except in execution of the orders of the city council for the payment [of] appropriations made by resolutions or ordinance of the council.

And referring specially to int. 4th, in regard to the $40,000 paid by the L. & N. R. R. Co., affiant says that he has not the same in his possession or control, except in the same manner and to the same extent to which he, as treasurer, is charged with the receipts and disbursements of the moneys of the city of New Orleans, from whatever source derived.

That he did, in his then capacity of administrator of finance, receive from the Louisville and Nashville R. R. Co., in accord-
41 ance with the terms of ordinance No. 8079 and the agreement thereunder made before S. Flower, N. P., the sum of forty thousand dollars, and deposited same, as he was bound to do according to law, with the fiscal agent of the city of New Orleans.

Affiant, further answering, says that the city and himself, as administrator of finance, were immediately thereafter notified by the board of liquidation of city debt that the ordinance 8079 and the agreement thereunder [was] unauthorized and *ultra vires*, and that the whole subject-matter vested, by operation of act No. 133 of the acts of session of 1880, in said board of liquidation; and affiant is informed that said board of liquidation instituted legal proceedings to annul said settlement and compromise, proceedings made part hereof being now pending in this hon. court, suit being No. 10180 of the docket thereof, entitled The Board of Liquidation *vs.* The

Louisville & Nashville R. R. Co. *vs.* The City of New Orleans,
42 in which suit the city answered that she held the forty thousand dollars to be restored to said L. & N. R. R. Co. should it be decided that said compromise was illegal, null, and void.

Further answering, affiant say that he is informed that a resolution to rescind said compromise, and repeal the ordinance 8079, A. S., and to tender said forty thousand dollars to the L. & N. R. R. Co., is now pending for final action before the city council, which resolution was offered before the garnishment process herein was issued or served.

Said ordinance 8079, said suit No. 10180, and said resolution to rescind are made part of this answer.

And, for further answer, affiant says that under no circumstances is said sum of forty thousand dollars subject to seizure under execution herein; if said compromise is annulled the forty thousand dollars must be returned to the Louisville & Nashville R. R. Co.; if it is maintained & not successfully rescinded by the city, then the
43 said forty thousands dollars became part of the public funds and property of the city of New Orleans, dedicated by operation of act No. 81, acts of 1882, to the works of public improvement of a permanent character; or it may be applied to the payment of the bonded debt of the city under act No. 133, acts of 1880, or it remains with and falls into the general fund of receipts & revenues of the city for the year 1882, applicable to the alimony of the government, and in no event can it become or be held a private asset, free from all public dedication or destination, and therefore not liable to seizure.

(Signed) B. T. WALSHE.

Sworn to and subscribed before me this 8th day of June, A. D. 1883.

[SEAL.] (Signed) J. D. TAYLOR,
Not. Pub.

44 *Motion to Traverse Answers of Louisiana National Bank.*

Extract from Minutes, April term 1883.

NEW ORLEANS, *Tuesday, June 12th*, 1883.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS, } No. 8825.

On motion of Wm. Reed Mills, A. Goldwhaite, and J. Ward Gurley, Jr, Esquires, solicitors for complainant, and on suggesting to the court that the answers of the Louisiana National Bank, through J. H. Oglesby, its president, and of B. T. Walshe, city treasurer, and B. T. Walshe individually, are untrue and insufficient in law, and are denied by complainant to traverse the same—

It is ordered by the court that the said The Louisiana Nation[al] Bank, by its president, J. H. Oglesby, and B. T. Walshe, as
45 city treasurer and individually, do show cause, on Monday, the 18th day of June, 1883, at 11 o'clock a. m., why their said answers should not be set aside, and they and each of them should not be adjudged to pay to this appearer the sum of forty thousand dollars in their or his possession belonging to the city of New Orleans.

Marshal's Return.

Received June 13th, 1883, by the U. S. marshal, and I served a true copy of the within rule on the parties herein named in the following date and manner, to wit: Louisiana National Bank of New Orleans, personally on Joseph H. Oglesby, Esq., president of said bank, June 13th, 1883; B. T. Walshe, Esq., individually, as treasurer of the city of New Orleans, personally, June 13th, 1883.

(S'g'd) E. S. CURRY,
D'y U. S. Marshal.

Testimony of J. H. Oglesby and Fred. D. King. Filed June 18th, 1883.

United States Circuit Court, Fifth Circuit, Eastern District of La.

46 MYRA CLARK GAINES } No. 8825.
vs.
CITY OF NEW ORLEANS. }

Testimony taken in open court on trial of traverse of answers of the garnishees and on the intervention of Mrs. Sarah M. King, together with offerings by the respective parties on hearing of said traverse and intervention, and of the defendant's motion to quash, this 18th day of June, A. D. 1883.

On the motion to quash on behalf of the city, Mr. Buck offers in evidence act No. 5 of the acts of 1870 of the Legislature and State of Louisiana, extra session.

2. Also the answers of the garnishees, particularly those of Joseph H. Oglesby, president of the Louisiana National Bank, and B. T. Walshe, treasurer of the city, and W. J. Behan, mayor.

3. All the documents and exhibits annexed to these answers, particularly the compromise settlement between the city of New Orleans and the Louisville and Nashville R. R. Co., before Samuel
47 Flower, notary public, October 11th, 1882.

4th. Also the ordinances now pending before the city council relative to the revision of this compromise, offered on or before April 22d, 1883, before the council.

5th. Exhibit D, offered as an amendment to the above April 29th, 1883.

6th. Act No. 133 of the acts of 1880 creating the board of liquidation.

7th. Also the record in the suit of The Board of Liquidation *versus* The Louisville and Nashville R. R. Co., No. 10180 of this court, particularly the answer.

8th. Also the record in the case of The Louisville and Nashville R. R. Co. against The City of New Orleans, pending in the Supreme Court of the United States as No. 17 of the docket thereof, being 7992 of this court, being the suit purporting to be compromised by the ordinance of the city council, No. 8079, of the act of October 11, 1882, already offered.

9th. Also a certified copy of the opinion and order of the Supreme Court of the United States annexed to the answer of the garnishees, the Louisiana National Bank, in the case No. 17 of
48 the Supreme Court of the United States.

10. Also the motion and order for writ of error by the city in suit No. 8825 of this court, as also the final decree in said case.

On the intervention of Mrs. S. W. King Mr. King offers in evidence—

1st. The letters testamentary showing that the succession of W. W. King has been opened and the appointment of Mrs. S. W. King as testamentary executrix.

2nd. Also the ordinance No. 4963, administration series, showing the contract to pay W. W. King $1,000.

3rd. Fred. D. King, being sworn, says that the late W. W. King took an appeal in the case now known as No. 17 of the docket of the Supreme Court of the United [States]; that he superintended the transcript of appeal and filed the same; that he attended to said case in the Supreme Court of the United States up to the time of his death, in March, 1881, and that no other counsel was em-
49 ployed in said case; that said case was compromised, and the city of New Orleans received from the same the sum of $40,000, which sum was deposited in the Louisiana National Bank; that said W. W. King has never, nor his succession has never, received any proportion of the said fee of $1,000; that said claim has never been disputed by the city of New Orleans, but has been recognized; that said $40,000 deposited in the Louisiana National Bank and seized herein were derived from the said case of The City of New Orleans against The Louisville and Nashville R. R. Co., being No. 144, now 17, of the docket of the Supreme Court of the United States.

Complainant offers the Exhibit C, attached to the answer of the Louisiana National Bank in the case No. 8825, which applies only to the intervention of Mrs. W. W. King; also the answers of the board of liquidation.

Testimony of J. H. Oglesby, Marked "A."

JOSEPH H. OGLESBY, being sworn in traverse, says:

50 By Mr. GOLDWHAITE:

Q. You are the president of the Louisiana National Bank?

A. I am.

Q. Have you knowledge of a deposit made by the City of New Orleans of $40,000 in that bank?

A. I have.

Q. When was the deposit made?

A. I think the 15th October, 1882.

Q. Have you any money to the credit of the City of New Orleans at present in that bank, or had you at the time the interrogatories were received?

A. I have—and had at all times.

Q. How much?

A. I had a balance larger than $40,000 to her credit from day to day, but always $40,000.

Q. How does that deposit stand in your bank?

A. I have not the bank books here, and cannot say. The deposit beyond this $40,000 is very trifling, no taxes coming in for this year.

Q. How does this deposit of $40,000 stand?

51 A. To the credit of the city, with the strict understanding that it is to remain there to abide the result of the suit of the syndicate of the bonded debt and the Louisville and Nashville R. R. Co.

Q. Is it a special deposit?

A. We have but one entry in the general account of the city. We have but one account, but that $40,000 was specially placed there, subject to the restrictions I have mentioned, well known to the officers and tellers of the bank.

Q. Is the $40,000 in any special package or susceptible of identification?

A. No, sir; it is only the bank's credit makes it good.

Q. With whom was the agreement made that you refer to?

A. That I cannot tell you of my own personal knowledge. I cannot state that, for I was not here, but when I came here and discovered these things I enquired and got the information from the cashier and paying teller.

Q. Was the agreement in writing?

52 A. Not to my knowledge, but the money has always been kept there, the $40,000.

Q. Is it in the fund against which the city can check?

A. It cannot check against that. It would be thrown out if it did. That $40,000 is to remain there, and it is thoroughly understood so by the paying teller.

Q. By whom are checks drawn against the fund in your bank?

A. The checks for city disbursements are drawn by the city treasurer, Mr. Walsh.

Q. Were you in the city of New Orleans when that deposit was made?

A. I stated I was not. I stated before I was not in the city when this deposit was made. It was by looking over the account that this information came to me and from the cashier and paying teller.

Q. Nobody can draw the money of the city except Mr. Walshe?

A. No, sir; none but his check.

Q. Would you pay that money out to anybody except upon the check of the City of New Orleans?

53 A. Not a dollar.

By Mr. MILLER:

Q. Would you pay it out at all?

A. I would not pay it out at all until the case is settled, because I am prosecuting that case myself—that is, the case in the Supreme Court.

By the COURT:

Q. With whom was that agreement made that you were to hold this money.

A. With the officers of the bank, in my absence.

Q. Made by the bank, but with whom on the other side?

A. I understand by Mr. Walsh, representing the city.

Bill of Exceptions as to J. H. Oglesby's Testimony. Filed June 18, 1883.

U. S. Circuit Court, Eastern Dist. of La.

MYRA C. GAINES *vs.* CITY OF NEW ORLEANS. } No. 8825.

54 Be it remembered, on the trial of the rule on the garnishees, the answers of the garnishees being read, and the plaintiff in the rule having produced *as* the testimony of Joseph H. Oglesby to support the traverse, whose testimony appears in the record of this cause, and no other testimony being produced in support of said traverse:

Thereupon the counsel for the city and the garnishees requested the court to hold said answers conclusive and dismiss the said rule, but the court refused so to decide and dismiss the rule; to which refusal so to decide the counsel for the city and said garnishees excepted, and tender this bill of exceptions for signature.

June 18th, 1883.

(Signed) EDWARD C. BILLINGS, *Judge.*

55 *Offerings by C. F. Buck, City Attorney.*

No. 5.

An act to limit and restrict the power of courts to issue orders or writs of mandamus and *fieri facias* against the city of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the city of New Orleans.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That from and after the passage of this act no court within the State shall have authority or jurisdiction to allow, order, hear, entertain, or enforce any summary process or proceeding, or writ, or order of mandamus, either against the controller, deputy controller, or any auditing officer of the city of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel

said controller or deputy controller or auditing officer to issue and deliver any order or warrant for payment of money, or against the treasurer, assistant treasurer, or any officer or officers charged
56 with the disbursement of the moneys of the city of New Orleans, the object of which shall be, either directly or indirectly, to enforce the payment of money claimed to be due from the city of New Orleans to any person, persons, corporation or corporations, whatsoever; but all actions or proceedings for the recovery of any sum of money claimed to be owing by the city of New Orleans shall be in the ordinary form of action instituted against the city of New Orleans as a corporation, and not against any branch, department, or officer thereof, and shall, in all respects be conducted in the same manner as other ordinary actions.

SECT. 2 Be it further enacted, etc., That hereafter no writ of execution or *fieri facias* shall issue from any of the courts in this State against the city of New Orleans to enforce the payment of any judgment for money against the city of New Orleans, but final judgment against the city of New Orleans condemning said corporation to pay any sum in money when the same shall have become executory shall have the effect in law of establ-ing and fixing the amount of plaintiff's demand against said corporation, and the
57 plaintiff may cause a certified copy of the said judgment, together with a copy of the plaintiff's petition and the defendant's answer in the cause in which said judgment is rendered, together with the certificate of the clerk of said court that such judgment is final and executory, to be filed in the office of the controller of said city; and it shall be the duty of the controller or auditing officer of said corporation to receive the same and cause the same to be registered in his office of the date on which the same shall have been presented, and when so registered it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the common council: Provided always, That there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure required to be made by the one hundred and
58 twenty-fourth section of the act of the Legislature entitled An act to amend an act entitled "An act to consolidate the city of New Orleans and to provide for the government of the city of New Orleans and the administration of the affairs thereof," approved March twenty, eighteen hundred and fifty-six, or such laws as may be hereafter enacted relating thereto.

SEC. 3. Be it further enacted, etc., That in case the amount of money designated in the annual budget for the payment of judgments against the city of New Orleans, at the date when any judgment against the said corporation shall have been final and executory, shall have been exhausted, the common council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses a sufficient sum of money to pay said judgment or judgments, but if

no such appropriation be made by the common council then all judgments shall be paid, in the order in which they shall be
59 filed and registered in the office of the controller, from the first money next annually set apart for that purpose.

SEC. 4. Be it further enacted, etc., That if, by reason of the failure of the controller or the auditing officer of the city of New Orleans or of the treasurer or disbursing officer of said corporation to perform his duty, or if by reason of the neglect or malfeasance of them or either of them, any person, persons, corporation, or corporations shall be unjustly delayed in the payment of any judgment or demand against the city of New Orleans, or shall not be paid in their due and regular order in which such demands are entitled to be paid, and shall be prejudiced and suffer loss and damage thereby or by reason of any unjust preference to other creditors, such person, persons, corporation, or corporations so injured by the act of either of said officers, shall have a right of action against such officer or officers, individually, by whose act or acts he or they have suffered loss and damage, and against the surety or sureties on
60 the official bond of such officer, and may recover damages therefor against said officer and sureties for such amount as they may establish on the trial of such cause.

SECT. 5. Be it further enacted, etc., That this act takes effect and be in force from and after its passage and that all acts and parts of acts in conflict with this act be, and are hereby, repealed, in so far as the same conflict with any of the provisions of this act.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieut. Governor & President of the Senate.

Approved March 17th, 1870.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

GEO. E. BOVEE,
Secretary of State.

61 *Offerings by Mr. C. F. Buck, City Attorney.*

No. 133.

An act to liquidate the indebtedness of the city of New Orleans and to apply it- assets to the satisfaction thereof; to create a board of liquidation and prescribe their duties, and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That for the purpose of liquidating, reducing, and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: Two by the Governor of the State of Louisiana, two by the Lieutenant Governor,

and two by the speaker of the house of representatives and the mayor of the city of New Orleans; the treasurer and the controller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate: Provided, That in case no change is made in the present city government the present commissioners of the consolidated debt shall act as *ex-officio* members of said syndicate, and the mem-
62 bers of the syndicate so named shall fill all vacancies in their number from death, resignation, or otherwise.

SEC. 2. Be it further enacted, etc., That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the syndicate hereby created, shall constitute a board of liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans. The board of liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as here after provided. The said bonds shall be signed by the mayor and countersigned by the administrators of accounts and of finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four *pens* per annum from the date of said bonds, payable semi-annually on the first day of April and October of each
63 year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the board of liquidation and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States, and the said board of liquidation shall be, and it is hereby, empowered and authorized to establish in New York, London, Paris, and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. Be it further enacted, etc., That the board of liquidation of the city debt be, and it is hereby, authorized and empowered to retire and cancel the entire valid debt of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations or by exchange of the new bonds against said obligations, on
64 such terms as may be agreed upon between the holders of the said old obligations and the board of liquidation: Provided, The new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation, with interest accrued thereon: And provided further, That the entire issue of new bonds sold or exchanged as above provided shall not exceed in all ten millions of dollars.

SEC. 4. Unimportant; refers to fraudulent bonds, and provides that they shall not be funded, unless ordered by judge.

SEC. 5. Be it further enacted, etc., That it shall be the duty of the city authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be, and is hereby, empowered and authorized to dispose of said property on such terms and conditions as may be
65 deemed favorable, the proceeds of such sales to be deposited with the fiscal agent of the board, at credit of "city debt fund."

SECT. 6. Be it further enacted, etc. That nothing in this act shall be construed as effecting or in any manner impairing the act 31 of 1876, commonly known as the "Premium-bond act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium-bond act; and it shall be the duty of the board of liquidation to apportion the proceeds of said tax and apply the same *pro rata* and in the proportion which each form of bonded debt shall bear to the entire amount of the city debt, and such portions of the said proceeds of the tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest of the bonds created under this act.

SECT. 7. Unimport; make it felony for a board of liquidation to misappropriate funds of the board. * * *

66 SECT. 8. Be it further enacted, etc., That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created, at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act, at a price not exceeding par; and the bonds or obligations purchased, exchanged, or retired shall be canceled and destroyed by the said board of liquidation after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such witnesses as may desire to attend. A process-verbal of the same, giving the amounts, numbers, dates, and other particulars, for identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

67 SECT. 9. Unimportant; provides for registry of bonds and for issue of certificates, and why holders prefer it.

SECT. 10. Unimportant; provides for office and office expenses of board.

SECT. 11. Be it further enacted, etc., That the city council be, and is hereby, required to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of

this act, and any tax levied shall continue in force until superceded by a new levy for the same purposes.

SECT. 12. Be it further enacted, etc., That all parts of all laws in conflict with this act be, and the same are hereby, repealed.

68 *Offerings by Mr. C. F. Buck, City Attorney.*

Petition of New Orleans, Mobile & Texas R. R. Co. Filed in Superior District Court, Parish of Orleans, July 8th, 1874.

NEW ORLEANS, MOBILE & TEXAS R. R. CO.
vs.
CITY OF NEW ORLEANS. } 26069.

To the honorable Jacob Hawkins, judge of the superior district court for the parish of Orleans:

The petition of the New Orleans, Mobile and Texas Railroad Company, a corporation created by and under the laws of the State of Alabama, and permitted and authorized by the laws of the State of Louisiana to maintain its railway and exercise its rights within the State of Louisiana, respectfully shows—

That by the laws of Louisiana your petitioner has had conferred upon it the right to construct and maintain a railway within this State, and connecting the cities of New Orleans and Mobile, coming into the city of New Orleans by the way of Elysian Fields street; thence passing up the levee on the front of the city to Calli-
69 oppe street, and to construct in connection therewith, and for the uses thereof, certain freight and passenger depots, wood-yards, water-tanks, and other necessary buildings and appurt-ances have been constructed at great cost, and have been maintained and used for the purposes of commerce, to the great advantage of the trade of New Orleans.

That the right of your petitioner to maintain said railway tracks and necessary buildings and appurtenances has been recognized by the honorable the supreme court of Louisiana in its opinions and decrees delivered on the 4th of May, 1874, in actions wherein The New Orleans, Mobile and Chattanooga Railroad Company was plaintiff and The City of New Orleans a defendant, by which opinions and decrees an injunction which had heretofore been ordered by said court against said railroad company was set aside, and the plaintiff allowed to remain in possession of Elysian Fields
70 street and the levee, below Canal street, and to maintain its railway therein absolutely, and to maintain its railway buildings, etc., on the levee and batture, between Canal and Callioppe street-, and remain in peaceable use and enjoyment thereof, subject to certain rights of the city of New Orleans to be judicially ascertained, as by the records of said suits, Nos. 3692 and 3701 of said supreme court, will more fully appear.

Now, your petitioner shows that, being in lawful and peaceable possession, as aforesaid, of its said costly and valuable property, the City of New Orleans, through its officers and agents, on the 9th day

day of July, 1874, has tortiously, unlawfully, and violently made an attack upon the property of your petitioner in the neighborhood of St. Joseph street, within the space heretofore mentioned, and has begun with a force of about one hundred men to demolish and destroy the fences, buildings, and other property of your petitioner, and is still continuing said unlawful and outrageous acts of violence, and will continue the same, to the irreparable injury of petitioner, unless restrained by injunction.

71 That by said acts of outrage and violence by said defendants petitioner has suffered in damages, counsel fees, loss of business, and injury to property the sum of ten thousand dollars.

Wherefore, in consideration of the premises and the annexed affidavit, petitioner prays that a writ of injunction may issue herein, according to law, restraining and enjoining the defendant, and each and every one of its officers and employés, from interfering in anywise with the property of petitioner in the space heretofore described on the levee and batture between Canal and Calliope streets, and from destroying or attempting to destroy any property of petitioner within the limits of New Orleans, from proceeding against petitioner or its property, except by due process in the courts of law, and that after due proceedings had said injunction be made perpetual, and for citation of said defendant and judgment against it for ten thousand dollars and interest, from judicial demand, and all costs and general and equitable relief.

(Signed) KENNARD, HOWE & PRENTISS,
A. MICON,
Of Counsel.

72 *Answer of City of New Orleans.*

Superior District Court for the Parish of Orleans.

NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY
versus
CITY OF NEW ORLEANS. } No. 26069.

And now before the court come- The City of New Orleans, and, for answer to the petition herein filed and served upon her, she denies each and every allegation therein contained except such as may be hereinafter admitted.

And, for special answer, this appearer further denies the existence of a judgment of the supreme court of the State of Louisiana having the force and effect set forth and alleged in plaintiff's petition, and avers and declares in and by a decree rendered in a certain suit in said court, and known and designated on the docket thereof as No. 3692, being the same judgment rendered *to* in plaintiff's petition, the court aforesaid merely recognized and intended to recognize a right of way on the part of the New Orleans, Mobile and Texas Railroad Co. in and through certain public streets of the city of New Orleans.

73 Further answering, says the supreme court of Louisiana, in and by a certain judgment therein rendered in the said

suit of the New Orleans, Mobile and Chattanooga Railroad Company *vs.* City of New Orleans, known on the docket of said court as No. 3701, recognized and decreed the city of New Orleans to be the legal and equitable, the sole and only, owner of all the property, real and personal, and all the rights, franchises, privileges, and servitudes claimed and demanded by the said city in the suit aforesaid. The said judgment, which was founded on the same cause of action, with the same demand, and between the same parties as is set forth in the petition filed in this case, this appearer now pleads against the plaintiffs herein as *res adjudicata*.

And this appearer further shows unto your honors that the judgment of the supreme court of Louisiana hereinbefore last referred to not only precludes and estops the plaintiff herein from having and maintaining the present action, but that under and by virtue of the same the city of New Orleans is legally and equitably entitled to be put in possession and to have absolute and unrestricted control of all the property, real and personal, and all the rights, franchises, privileges, servitudes, and claim of every nature and description referred to in and embraced by the judgment in the aforesaid suit, No. 3701.

74

Further, this appearer says that if any portion of the real estate referred to *and* in and embraced by the aforesaid decree of the supreme court in favor of this appearer, or referred to in or embraced by the petition herein filed, has been lawfully dedicated to public use it is the right and duty of this appearer to remove therefrom all impediments and obstacles found in said streets, so as to render the same open and free for use on the part of the public.

Wherefore this appearer prays that upon the original action judgment may be entered in favor of this appearer and against the said plaintiffs; that the injunction herein obtained may be dissolved and held for naught; that this appearer may have and recover, in accordance with law, fifty thousand dollars for damages by her sustained by reason and on account of the aforesaid writ of injunction, and twenty-five hundred dollars special damages for attorney-' fees, and that the said plaintiffs may be furthermore condemned to pay all the costs of this suit.

75

And, reconvening and becoming plaintiff in reconvention, this appearer prays that the New Orleans, Mobile and Texas Railroad Company may be cited to appear and answer this demand in reconvention; that in due course of law the rights, claims, and demand in favor of this appearer, as fixed and decreed by the supreme court of Louisiana in the aforesaid suit No. 3701, may not be recognized by this honorable court, but that such order or orders, writ or writs, process or processes, as shall become necessary be directed to issue, not only for the purpose of placing this appearer in the quiet and peaceable, the sole and absolute, possession of all the property, rights, credits, claims, demands, privileges, franchises, and servitudes accorded to her by the supreme court of Louisiana in manner and form and by the judgment aforesaid, but to maintain and keep this appearer in the quiet, uninterrupted, sole, and absolute possession and enjoyment thereof,

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free and clear of all hindrance or disturbance on the part of plaintiffs or any party or parties whomsoever.

She further prays that [if] it should appear upon the trial of this case that any part or portion of the landed property claimed by this appearer under the judgment aforesaid has been lawfully dedicated as a public street for the uses and convenience of the public and that obstructions or obstacles have been placed in such public streets by the plaintiffs herein or any other person or persons whomsoever, that this appearer may be declared to have the right and authority to remove any and all such obstructions and impediments and to open the public streets aforesaid for the public use and convenience, and that the said plaintiffs may be perpetually enjoined and restrained from interfering, directly or indirectly and in any
77 manner whatever, with the free and full use and enjoyment on the part of the public of such public streets or places.

This appearer further prays that plaintiffs may be condemned to pay such damages as are hereinabove prayed for, together with all the costs of suit, and that this appearer may have such other and further order, judgment, and relief as may be suited to law and the nature of the case.

(Signed) H. H. WALSH,
Ass't City Attorney.

(Signed) GEO. S. LACEY,
City Attorney.

(Signed) WM. W. KING,
Of Counsel.

Plaintiff's Petition for Removal of Cause to U. S. Circuit Court.

STATE OF LOUISIANA:

Superior District Court for the Parish of Orleans.

FRIDAY, *the 2d day June,* 1876.

Present: The Honorable B. L. Lynch, judge.

N. O., MOBILE AND TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The plaintiff presents to the court a petition and bond for
78 the removal of this cause to the circuit court of the United States, according to the acts of Congress, and asks for the filing of the papers and making of the order prayed for.

Whereupon the court directs the filing of the papers, and that a notice issue to the defendant's attorney, returnable on Tuesday next, to show cause, if any, against the order.

Extract from the minutes.
A true copy.
(Signed) P. E. BURKE,
D'y Clerk.

Removal of Cause to the U. S. Circuit Court.

TUESDAY, *June 6th*, 1876.

Present: Hon. B. L. Lynch, judge.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 26069.

The rule herein taken for the removal of cause to the circuit court of the United States came on this day for trial.

Jno. A. Campbell, for plaintiff in rule, defendant being absent and not represented.

When, after hearing the pleadings and counsel, the court
79 considering the law to be in favor of the plaintiffs in rule—

It is ordered that said rule be made absolute, and according-, that this cause be removed to the circuit court of the United States.

Decree. Entered and Filed June 11th, 1878.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

NEW ORLEANS, MOBILE & TEXAS R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 7912.

This cause came on to be heard on pleadings, proceedings, and orders in the cause and was argued by counsel for all of the parties.

The court, after consideration of the premises, declares and decrees that the judgment rendered by the eighth district court of the parish of Orleans in the suit No. nineteen in that court, between the same parties, the 19th day of December, 1871, and which judgment was affirmed by the supreme court of this State the 4th day of May,
1874, upon appeal made by the defendant in this suit, has the
80 authority of *res adjudicata* between them, the subject-matter of the suits being the same and the object identical, and the wrongs committed by the defendant, as shown by the testimony, affects the property mentioned in the judgment so rendered by the State tribunals.

The court orders and decrees that the injunction granted in this suit by the superior district court before its removal to this court be perpetuated and the defendants be enjoined and restrained from disturbing the plaintiff-, their agents, servants, and assigns, in the occupation, use, and employment of their railroad tracks, depots, and other appurtenances under their charter which are in and along the streets, squares, [and] spaces specified in the grants of the General Assembly to the said corporation, and also in the order and decree of the said supreme court in the cause No. 3692 aforesaid, a transcript of which is on file, and that the defendants pay the costs of this suit.

June 11th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

81 OFFERINGS BY MR. C. F. BUCK, CITY ATTORNEY.

Bill of the Board of Liquidation. Filed March 31.

U. S. Circuit Court.

BOARD OF LIQUIDATION
vs.
LOUISVILLE & NASHVILLE R. R. Co. } No. 10180.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The Board of Liquidation of the City Debt, a corporation created by the act of the Legislature of Louisiana number 133 of 1880, with the powers and duties created by said act, domiciled in said State, where it performs its functions, and a citizen of the State of Louisiana, exhibits this bill of complaint against the Louisville and Nashville Railroad Company, a corporation created by the laws of Kentucky, domiciled in and carrying on its business in said State as well as in this State, and a citizen of said State of Kentucky, and against the New Orleans, Mobile and Texas Railroad Company, a corporation created by the laws of Alabama, recognized as
82 such by the laws of Louisiana, and a citizen of *of* Alabama as well as of Louisiana, and against the City of New Orleans, a political corporation for the government of the said city, created by the laws of Louisiana.

And thereupon your orator complains and says that the said Louisville and Nashville Railroad Company is a corporation created by the laws of Kentucky and is a citizen of said State; that the said New Orleans, Mobile and Texas Railroad Company is a corporation created by the laws of Alabama and recognized as such by the laws of Louisiana, and is a citizen of the State of Alabama as well as of Louisiana; that the city of New Orleans is a political corporation created by the laws of Louisiana for the government of said city, and that your orator is a corporation created by the laws of Louisiana and is a citizen of Louisiana.

Your orator, further complaining, shows that on the 20th September, 1820, an act of compromise and donation was passed be-
83 tween the city of New Orleans and the front or riparian proprietors claiming rights in the batture or alluvion existing or extending along said river front from the lower line of the property of William W. Montgomery to the boundary line between the city and said faubourg; that by the terms of that compromise a certain portion of that batture, to wit, all between the new levee then existing on the whole extent of said batture and the marginal line of the river when the waters were at the lowest stage, including the land of Tchoupitoulas St., than laid out, and the land on which the new levee was constructed, was donated to said city so far as any right or interest thereon of said proprietors enabled them to make said donation, the city upon its part coming under certain obligations accompanied with the stipulation that the land should be inalienable, not subject to the debts of the city, and that the public

should have certain rights with respect to said lands; all of which more fully appears by reference to said act passed before H.
81 Lavergne, notary, on said date, and copy of said act is herewith filed as part hereof.

That on the 20th June, 1851, another compromise was made between the city of New Orleans and the then riparian proprietors, by which, in view of the increase of said alluvions or batture between the line of the new levee of 1820, which in 1851 had become New Levee St., and the river, it was agreed that three streets, to wit, Fulton, Front, and Delta streets, should be opened and laid out through said batture; that the squares or islets between the said streets should be sold, and the proceeds divided between the city and the said front proprietors in the proportion of one-third to the city, to be applied to the debts of the old city—*i. e.*, to the several sinking funds; one-third to the then second municipality, and one-third to the said proprietors.

And it was further stipulated and agreed [that] all that portion of said batture between Delta St. and the Mississippi river
85 above Lafayette St. to the line of Montgomery's property and all that portion of the batture between Front St. and the river Mississippi from Lafayette street down to Canal St. shall be, and was thereby, vested in perpetuity and full ownership in the said municipality number two, in favour of whom said proprietors ceded and forever relinquished all their claims in and to said batture, as well as to all and every enlargement thereof or accretions thereto by new formation; all of which more fully appears by the said act of compromise passed before H. B. Cenas, notary, of date the 20th June, 1851, and by the plan marked "A," showing the extent and location of the land thus ceded to the second municipality, which, with copy of said act, are herewith filed and made part hereof.

That the stipulation- of said compromise of 1851 were all carried into effect, and ever since the title to all said batture between Delta street and the river above Lafayette St. and between Front
86 St. and the river from Lafayette street down to Canal street has been deemed to have been acquired by the city succeeding to the title of the second municipality by the title of ownership; that accordingly the city has laid out streets through said batture, dividing it into squares, from time to time has sold portions thereof, and has always been recognized as owner of all that space of said batture not sold.

And, further complaining, your orator shows that by certain acts of the Legislature of Louisiana, passed in 1869 and 1870, that body undertook to grant to the New Orleans, Mobile and Chattanooga Railroad Company the right to locate, construct, and maintain a passenger depot, with offices and apartments suitable for the business of said road, upon that portion of said batture acquired by the city under said compromise of 1851, bounded by Canal, Delta, Poydras streets and a line parra-lell to and one hundred and fifty feet easterly from Delta street; and said acts further professed to grant

to said company for the construction of a freight depot
87 and for other purposes of its business the right to occupy and enclose the blocks of ground, parts of streets, and portions of the levee embraced within said batture, belonging to the city and acquired by said compromise, bounded by Girod, Water, Calliope [streets], an- a line parrallel to and two hundred and ninety feet easterly from Water street, with the provision that the company should not enclose and occupy any part of the said blocks owned by individuals until the company has acquired the title thereto, but the wholesale appropriation of the property of the city attempted by these legislative acts is accompanied with no other qualification or restriction whatever; all of which more fully appears by reference to said acts, No. 26 of 1869 and No. 31 of 1870, sess. acts of 1869, p. 128, and session acts of 1870, p-. 55, 58, and 59, specially referred to for fuller explanation and greater certainty.

And your orator further shows that said legislative acts in
88 their scope and purpose propose to divest the city of New Orleans of its property held by the city in its proprietary and private character and to confer that property upon the railroad company named in said acts; that it was wholly incompetent for the Legislature thus to donate the property of this city; that the title of the city to said property stood protected from all such legislation as that announced in said acts; that the acts palpably and grossly transcended the legislative competency; were and are forbidden by the 110th article of the State constitution of 1868, the corresponding article No. 155 of the State constitution of 1880, *the* article 1st, section 10, and article fourteen, section 1s-, of the Constitution of the United States, and are void and of no effect.

And your orator shows that said acts were always resisted by said city as invasions of its rights; that it- title to said batture lots and squares has been in fact recognized by the railroad company by its purchases from the city of some of the squares and lots lying
89 within the limits of the property proposed to be donated by the said acts; that other parties at about the time of the passage of said acts were negotiating with the city for the purchase of some of the squares embraced in said attempted grant, but by said legislative acts it was proposed to wrest from the city all said large and valuable property to the prejudice of the city and the rights of its creditors, who would be largely benefited by the large amounts susceptible of being derived from the sales of said batture squares.

And your orator further shows that there were two suits brought in the State courts to maintain the pretensions of said railroad company based on said legislative acts; that the judgments in said suits — taken together, and they were rendered at the same time, and are to be construed together in their effect, as orators charge-, maintain the title of the city and declare the invalidity of the at-
90 tempted grant of said batture property; all of which more fully appears by reference to the suits entitled The New Orleans, Mobile and Chattanooga R. R. Co. *versus* City of New Orleans, and the same *vs.* same, Nos. 3692 and 3701 of the docket of the supreme court *are* of the State, and to the decisions rendered therein

in May, 1881, specially referred to for fuller explanation and greater certainty.

And your orator shows that subsequent to said decisions the city, acting upon its interpretations of their effect, proceeded to remove the buildings which the company had placed upon the property of the city embraced in said acts. Thereupon the company enjoined again, setting up said acts and claiming rights thereunder, and this fresh injunction suit brought by the company in the State court was by the company removed to the United States circuit court, as more fully appears by reference to said injunction suit, No. 2609, of
91 the late superior district court for the parish of Orleans, No. 7912 of the docket of the U. S. circuit court, and the record of appeal to the United States Supreme Court is No. 17 of the docket, and to which records of said suits reference is also specially made.

And your orator, further complaining, shows that with this appeal pending, involving the property of the city, the city undertook to enter into a compromise with said New Orleans, Mobile and Texas Railroad Company, and with the Louisville and Nashville Railroad Company, by which it was proposed to settle all matters in controversy on said appeal; to confirm to said companies all said property the subject of said legislative acts, and to dismiss said appeal, which would have made final said judgment of the United States circuit court, as appears by the said act of compromise passed before Samuel Flower, notary, of date the 11th October, 1882, and
92 the ordinance No. 8079, administration series, copies whereof are herewith filed for reference and greater certainty.

That the value of the said batture proposed to be confirmed to said railroad company by said compromise, excluding the property within the limits of the attempted donation which the company and others had bought and paid for, is largely in excess of five hundred thousand dollars. A particular estimate of said value by competent judges is herewith filed as part hereof, and the sum stipulated to be paid by the company for the confirmation to it of the large and valuable property is forty thousand dollars, as appears by the aforesaid copies herewith filed.

And, further complaining, your orator shows that by the act of the Legislature of Louisiana, number 133, of 1880 your orator is constituted a board of liquidation of the city debt, clothed with the authority to apply all the property of the city not dedicated
93 to public use to the liquidation of the bonded debt, which is now upwards of thirteen millions of dollars; that all said property is directed by said act to be turned over and transferred to your orator, solely vested with the power of sale thereof, for the purpose of applying the proceeds to the reduction and retirement of said bonded debt; that the powers of the board are repeated in the legislation of 1882, act No. 58; that prior to the act of 1880 the act, No. 31, of 1876 had pledged all city property susceptible of sale to the satisfaction of the bonded or floating debt, and by later legislation, the floating debt being excluded, the reduction to the bonded became exclusive; that thus the city authorities were, at and prior

to the said so-called compromise, stripped of all power of disposition over said property, except to turn it over to your petitioner for the trust stated in said act of 1880.

And your orator further shows that — 1869 and 1870, and long prior thereto, the city had extended streets through a large
94 portion of batture embraced in said attempted grant to the railroad company, and had laid off the same in squares and lots for sale for account and benefit of said city as the owner thereof; that the portion alone never sold by the city, but divided into squares for sale, was and is now in excess of the value of three hundred thousand dollars; had long ceased to be dedicated to public use or to be batture, in the ordinary sense of the word; had become divided into squares, and was all conveyed to your orator by said act of 1880 for the purpose therein expressed; that the portion of said batture embraced in said acts of 1869 and 1870 not divided into squares and lots is of very great value, and all of it not dedicated to public use, or that may hereafter cease to be so dedicated, is conveyed to your orator by said act of 1880 for said trust thereby created, and said plan is referred to as showing the extent of said batture, and the portion thereof divided into squares and lots by the extension of streets.

95 And your orator further shows that in the Supreme Court of the United States it opposed the dismissal of said appeal contemplated by said compromise, and said dismissal was stayed by the Court to enable your orator to prosecute this suit to set aside said compromise, as appear- by the order of the Supreme Court herewith filed as part hereof.

Further complaining, your orator shows that said ordinance of October 11th, 1882, and said so-called compromise with said railroad companies which said ordinance proposed to authorize, passed as they were without the knowledge or consent of your orator, persisted in against the remonstrances and protest of your orator, are grossly violative of the legal rights of your orator and of great prejudice to the public interests; that said ordinance and compromise in effect attempt to deprive the bonded creditors of the city of the large and valuable property embraced in said compro-
96 mise and applicable to pay said debt; that as long as said ordinance and compromise are permitted to be set up by said companies as affording a basis to assert claim to said property they cloud the title of your orator to said property for the purposes defined in said act of 1880, and prevent the sale and application of proceeds of said property by your orator for the payment of the bonded debt of the city, as required by said act.

And your orator shows that, notwithstanding the premises, the said railroad company do insist that said ordinance and so-called compromise and said grants which said compromise undertakes to confirm are legal and valid, and confer title to said property embraced in said grants upon said companies; that said companies are actually in possession of a large and valuable portion of the property embraced in said grants, and claim and assert title thereto

under said legislative acts of 1869 and of 1870, and under
97 said ordinance and so-called compromise of 1882, as well as under the dismissal of said appeal by the city attempted to be brought about by said compromise.

And your orator shows that it is entitled to have set aside and decreed to be invalid and of no force said ordinance and compromise of the 11th October, 1882, in so far as they seek to grant and confirm to said companies any right or title whatever to said property embraced in said legislative acts of 1869 and 1870, as made by said city without authority, and in so — as the said compromise and ordinance propose to dismiss said appeal taken by said city from the judgment in the aforesaid suit of The City of New Orleans *vs.* The Mobile and Texas Railroad Company, and to have it decreed that your orator has succeeded to the right of said city to maintain and prosecute said appeal.

To the end, therefore, that the said ordinance and so-called compromise of the 11th October, 1882, proposing to confirm to
98 said New Orleans, Mobile and Texas Railroad Company or to the Louisville and Nashville Railroad Company the rights upon that portion of the levee, streets, and grounds in the city of New Orleans bounded by Canal, Delta, [and] Poydras streets and a line parallel to 150 feet easterly from Delta street, and the blocks of ground, parts of streets, and portions of said levee bounded by Girod, Water, and Calliope streets, as the same is set forth in said legislatives acts No-. 26 of 1869 and 31 of 1870, may be decreed to be null and void and of no effect; that it may be further adjudged and decreed that said ordinance and compromise are void and of no effect, in so far as they stipulate for the dismissal of the aforesaid appeal now pending in the Supreme Court of the United States, taken by the city from said judgment of the U. S. circuit court in the said suit of The City of New Orleans *vs.* The New Orleans, Mobile and Texas Railroad Company; that it be fur-
99 ther decreed that your orator has the right to prosecute said appeal to reverse the same so far as said judgment decrees said property to said company or affects the same, and that your orator may — such further and other relief as the case may require—

May it please the court to grant unto your orator the writ of su-pœna issuing — of and under the seal of this court, to be directed to the said The New Orleans, Mobile and Texas Railroad Company, the said Louisville and Nashville Railroad Company, and The City of New Orleans, commanding them and each of them to be and appear in this court on a certain day and under a certain penalty, then and there to answer the premises and stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators will ever pray.

(S'g'd) MILLER & FINNEY,
Solicitors for Compl't.

100 J. H. Oglesby, the president of the board of liquidation of the city debt, *who* being duly sworn, deposes and says that he knows the contents of the foregoing bill; that the same is true of his own knowledge, except as to matters stated on his information or belief, and as to those written he believes them to be true.

101 OFFERINGS BY MR. C. F. BUCK, CITY ATTORNEY.

Plea, Demurrer, & Answer. Filed May 7th, 1883.

United States Circuit Court. In Chancery.

THE BOARD OF LIQUIDATION
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY & THE NEW ORLEANS, MOBILE & TEXAS RAILROAD COMPANY. } No. —.

These defendants, The Louisville & Nashville Railroad Company and The New Orleans, Mobile and Texas Railroad Company, reorganized, pleading, demurring, & answering to the bill of complaint of The Board of Liquidation of the City Debt, complainant herein, *these defendants,* now and at all times hereafter, saving and reserving to themselves all benefits and advantages of exception which may or can be taken to the many errors, uncertainties, and other imperfections in said complainants' bill of complaint contained, and especially reserving and insisting upon the exceptions filed by these defendants in the civil district court for the parish of
102 Orleans when said suit was pending in that court, & which now constitute part of the record and proceedings herein, and to so much and such parts thereof as these defendants are advised is or are material or necessary for them to answer, say that they admit that the Legislature of the State of Louisiana passed the act No. 133 in 1880, and provided therein for a board of liquidation, as set forth in said act, but they deny that said board of liquidation acquired the power claimed under said act; and respondent- say that they verily believe, and so charge, that said board never caused to be prepared or issued any bonds nor retired nor cancelled any debt of the city of New Orleans, nor was any transfer made by the city to said board of any property or rights described in complainants' —; that said act of the Legislature was practically null for this, among other reasons: That the debt could not be liquidated nor any bonds issued or disposed of under the terms of said act.

As to the history of the act of 20th of Sept., 1820, denominated an act of "compromise or donation," & of a certain act of
103 20th of June, 1851, and the matters stated relative thereto, these respondents do not know how far the same were carried out, but they deny that under said acts the city of New Orleans acquired any rights except as a public municipal corporation created by the Legislature of Louisiana & subordinate to its control as a part of the State government, and they aver and charge that the power of the State of Louisiana to change the destination of the property referred to in complainants' bill of complaint has been

fully recognized and determined between the city of New Orleans and these defendants in No. 3962 of the docket of the supreme court of the State—which judgment has been declared to be *res adjudicata*, and that the character of right or title of said city and the power of the State over the same were & are involved in said suits, and are not subject to examination or trial in this case; and defendants ask to be allowed to urge this as conclusive against complainants.

These defendants admit that the Legislature of the State of Louisiana, in the years 1869 & 1870, enacted the laws mentioned; that under said acts several ordinances [were] passed by the
104 city of New Orleans — these defendants and their predecessors have laid their railroad tracks in & through certain streets in said city, and have established depots, &c., as therein authorized, on part of the grounds described in said acts, and they have expended large sums of money in locating, constructing, & maintaining said lines of track & depots for use in accordance with said acts of the Legislature & said ordinances, and these defendants deny that said acts of the Legislature are not within its scope & power, as representing the sovereignty of the State, and deny that their effects is such as is charged by complainants.

Respondents admit that there were certain suits instituted and tried in the State courts of Louisiana involving different subjects, as appear- by the records & opinions therein, and in the suits No. 7962 of the docket of the U. S. circuit court judgment was rendered by the circuit court of the United States, district of Louisiana, declaring that the judgment of the supreme court of the State of Louisiana No. 3692 affirming the judgment of the eighth district
105 court of New Orleans was *res adjudicata*. Copies of said judgments are hereto annexed and marked Exhibits A & B.

From the judgment rendered by the circuit court of the United States, district of Louisiana, No. 7962, the city of New Orleans appealed, and said appeal has been pending in said court since October, 1878, and pending in the State court & in the circuit court of the United States at New Orleans since July, 1874, and that complainants have never appeared in said courts or anywhere else to assert any claim to any matter involved therein until about the 12th of Oct., 1882, when notice was given to the city authorities by complainant that it would assert its right to the fund derived from the agreement with these defendants, and subsequently application was made to the supreme court to be heard there in place of the city of New Orleans as appellant, as appears by the motion and order therein heretofore mentioned, a copy of said order being marked Exhibit "C."

Defendants say that it is true that on the 11th of October, 1882, the ordinance No. 8079 was adopted by the city council of
106 New Orleans, & the agreement referred to was signed by the mayor of said city to dismiss the appeal of the city of New Orleans in suit No. 17 of the docket of said court, and that it had full power to adopt said ordinance and dismiss said appeal; that the city of New Orleans has continuously exercised such powers since its organization as a municipal corporation, and has con-

stantly de-lt with all kindred matters in the presence of the board of liquidation since its creation without objection by said board or any assertion of right or claim upon the rights or property involved in this suit or other rights or property similarly situated, and the city of New Orleans has been universally recognized in all of the courts of this State & of the United States in which it has appeared as competent to control all of its suits & all that pertains to them, with full power to stand in judgment to appeal & discontinue or dismiss the same, & generally to exercise the powers granted under its charter, & the city has not been stripped of these powers by the act of 1880 or any other act of the Legislature of Louisiana. On the contrary, the powers of said city have been confirmed & en-
107 larged by the most recent acts of said Legislature, such as acts No. 20 & No. 81 of 1882; and these defendants deny that complainant has any right or authority to prevent the city of New Orleans from dismissing its new appeal in case No. 17 of the Supreme Court of the United States.

And these defendants say that they have no knowledge as to the amount of the city debt, but they deny that the property or rights involved in this suit have been transferred or directed to be transferred, or that complainants *is* vested with any rights in & to the same, or any power to sell and make title or otherwise to deal with any of the matters involved in the suit No. 17, now pending in the Supreme Court of the United States, but, on the contrary, the city of New Orleans had full power to make the agreement of 11th of Oct., 1882, & to dismiss the appeal in said suit.

These defendants further say that the property described in complainants' bill of complaint, which they were authorized to use by the acts of the Legislature of 1868, 1869, & 1870, & upon which a servitude or easement was granted to them by the State, is
108 not worth any such sum as is set forth in complainants' bill of complaint, nor half that sum, as they verily believe, & they file herewith affidavits in reference to the value of said property at the date of said acts & since. And they further say that in making the agreement herein mentioned consideration was properly given to the nature of the privileges & rights granted by the several acts of the Legislature, which were not as of a sale of property; also that in the suit which was pending judgment had been rendered against the city of New Orleans in the eighth district court of the parish of Orleans on the reconventional demand filed & plead by said city, in which it had set out its rights & claims upon said property, & adverse to these defendants' predecessors, in the same manner as the same is set forth in complainants' bill of complaint, and in the decree on said case it was ordered " that upon the answer and demand in reconvention filed by the city of New Orleans there be judgment against the plaintiff in reconvention, The City of New Orleans, and in favor of defendants to said plea and demand, The New Orleans, Mobile & Chattanooga Railroad Company; that the several acts of the General Assembly granting the New Orleans, Mobile
109 & Chattanooga Railroad Company the right to construct, maintain, & use its track, turnouts, switches, depots, etc., etc., along and

upon the levee streets batture in front of the city of New Orleans be maintained as constitutional and valid, and that the city of New Orleans be adjudged to have no right or title of private property in and to the batture lying in front of the Faubourg St. Mary, and that the said property be decreed to be the property of the public, whose destination can only be changed by legislative authority, & which the city cannot alienate or encumber," which judgment and decree was fully affirmed by the supreme court of Louisiana, & which was declared as *res adjudicata* by the circuit [court] of the United States, as per Exhibits D & E. The compromise was, therefore, of a lawsuit, in which the judgments of the courts had been adverse to the rights claimed, and the sum paid by these defendants, viz., forty thousand dollars, was adequate & with the purpose to terminate all litigation with the city of New Orleans. In the case of the New Orleans, Mobile & Texas Railroad Company the Supreme Court of the United States had confirmed the rights granted under one of the
110 acts of the Legislature of Louisiana, viz., act No. 67, of 1869, and recognized as correct the decision of the supreme court of Louisiana, declaring said act constitutional, & that the Legislature had power over the subject.

And defendant- further says that the act No. 31, of 1870, referred to in complainants' bill, confirmed to them through their predecessors all the rights granted under the ordinance adopted by the city of New Orleans, of 16th Feb'y, 1867, & 15th of Nov., 1867, long before the alleged creation of the Board of Liquidation, complainants herein. Copies of said ordinances are filed herewith as exhibits.

And these defendants say that said laws of the State & ordinances of the city of New Orleans were passed to induce the location, construction, and maintenance of a great public highway, which was declared to be of great public use, in which the whole city & State & general public were interested, and from which great public advantage has accrued; that said laws and ordinances were within the scope & power of the State, and were constitutional and valid.

111 And these defendants deny any allegations in complainants' bill not sufficiently answered, confessed, traversed, & avoided, & aver that they are ready & willing to aver, maintain, and prove their answer and defense, and pray to be hence dismissed with reasonable costs and charges and for all equitable and general relief.

(Signed) J. T. HARAHAN,
Sup't & Manager L. & N. R. R.

(Signed) BAYNE & DENEGRE,
Solicitors for Def'ts.

Personally appeared James T. Harahan, who, being first duly sworn, says that he is the superintendant and manager of the Louisville & Nashville Railroad Company & of the New Orleans, Mobile & Texas Railroad Company, reorganized, [and] the devisions of said railroads within the State of Louisiana; that the other superior officers of said railroad company are absent from the State of

112 Louisiana, and that he is the representative of said railroad in the State of Louisiana & within the jurisdiction of the circuit court of the United States, fifth circuit, east'n district of Louisiana; that he has read the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters —, he believes it to be true.

(Signed) J. T. HARAHAN,
Sup't & Manager Louisville & Nashville & New Orleans, Mobile & T. R. R.

Subscribed and sworn before me May 7th, 1883.

(Signed) T. V. COUPLAND,
Commissioner United States Circuit Court, Eastern District of Louisiana.

OFFERINGS BY MR. C. F. BUCK, CITY ATTORNEY.

Decree Dismissing Bill & Order Allowing Appeal on Bond. Entered & Filed July 2d, 1883.

113 United States Circuit Court, Fifth Judicial Circuit, Eastern District of Louisiana. April Term, 1883. In Equity.

BOARD OF LIQUIDATION CITY DEBT
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY *et al.*

This cause came on to be heard on the bill, answer, and evidence, and was argued; whereupon it is ordered, adjudged, and decreed that complainant's bill is dismissed with costs.

And thereupon, upon motion of complainant suggesting a desire to appeal from said decree of dismissal, it is further ordered that an appeal be allowed from said decree to the Supreme Court of the United States returnable at its next term on a bond of five hundred dollars.

Done and signed in open court this 2d day of July, A. D. 1883.

(Signed) DON A. PARDEE, *Judge.*

114 *Bill of Exception. Filed June 19th, 1883.*

United States Circuit Court, Fifth Circuit & Eastern Dist. of La.

MYRA C. GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

On motion to quash execution, etc.

Be it remembered, to wit, on the 18th day of June, 1883, of the April term of said court of 1883, this cause was called for trial on the motion to quash execution and seizure filed by the defendant. Defendant, through her counsel, as in said motion of record herein and referred to and prayed, asked leave before going to trial that the Board of Liquidation of City Debt and the Louisville and

Nashville R. R. Co. be made parties to said motion, and should be notified to appear and plead thereto as being necessary parties to the determination of the question of the seizability of the fund of forty thousand dollars, as in said motion more fully appears.

115 Whereupon all parties then of record, to wit, Myra C. Gaines, plaintiff; The City of New Orleans, defendant (plaintiff in motion to quash); The Louisiana National Bank, and B. T. Walshe, treasurer, being ready and present in court for the purpose of trial of said motion and the traverse to the answers of garnishees, and all announcing themselves ready for trial, subject to the request and right of mover to have said board of liquidation and L. & N. R. R. Co. notified and made parties—

Whereupon the court ruled that said board of liquidation and the Louisville [and] Nashville R. R. Co. were not parties whom the defendants had a right to ask to have brought in as parties hereto, and that The City of New Orleans, defendant in execution, had no right to make them such by notice or service of the rule, and ordered the cause to proceed to trial.

To which ruling the counsel for the city of New Orleans did then and there submit this as their bill of exception, and prayed

116 that same be signed and made of record, and it is done accordingly.

(Signed) EDWARD C. BILLINGS, *Judge.*

Order on Petition of Intervention & Board of Liquidation.

Let notice of the application to file this intervention and 3d opposition be given to the parties in interest.

November 19th, 1883.

(Signed) EDWARD C. BILLINGS, *Judge.*

Order. Application to Intervene Fixed for December 7th, 1886.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *December 1st,* 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

117 On motion of Miller and Finney, attorneys for the board of liquidation, intervenors and 3rd opponents, it is ordered that the question of filing said intervention and 3rd opposition be fixed for hearing for Friday, 7th December instant, at 11 o'clock a. m., and that the parties in interest be notified.

Application to Intervene Heard, &c.

Extract from Minutes.

NEW ORLEANS, FRIDAY, *December 7th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the question of filing the intervention and 3rd opposition of the board of liquidation, Miller & Finney, for intervenor; Chas. F. Buck, city attorney, for defendant.

Whereupon, upon suggestion by counsel for the intervenor
118 of the inability of complainant's counsel to attend, and upon motion in that behalf, it was ordered by the court that the discussion of the matter be adjourned until Friday, the 14th inst., at 11 o'clock a. m., and that A. Goldwhaite, Esq., have notice hereof.

Motion to Pay Funds into Court. Entered and Filed Dec. 14th, 1883.

United States Circuit Court, Eastern District of Louisiana. In Equity.

MYRA CLARK GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

On motion of A. Goldwhaite, Wm. Reed Mills, and J. Ward Gurley, Esquires, solicitors for complainant, and on suggesting to the court that under the writ of *fieri facias* which issued in this cause an attachment and garnishment proceeding was taken out against the Louisiana National Bank as having property or money in its
119 possession belonging to the city of New Orleans, and on further suggesting to the court that by its answer in said garnishment proceedings the said Louisiana National Bank has admitted having a *a* fund of forty thousand dollars in its possession deposited by the treasurer of the city of New Orleans to the credit of the general fund of the city of New Orleans, but alleged not to be subject to garnishment herein, and on further suggesting that said fund is claimed by other parties than the city of New Orleans, and that it is necessary for the court to have said fund reduced to possession by the court in order to determine the rights of parties claiming or who may claim the right to such fund:

It is ordered by the court that the city of New Orleans and the Louisiana National Bank, garnishee, do show cause on Saturday, the 22nd day of December, 1883, at 11 o'clock a. m., why said garnishee, The Louisiana National Bank, should not pay said fund of forty thousand dollars into the registry of this court there to re-
120 main subject to the further order of this court.

Marshal's Return.

Received December 17th, 1883, by the U. S. marshal, and on Dec 17th, 1883, I served a copy *of* hereof on the Louisiana National Bank of New Orleans by handing the same to H. Luria, the cashier of said bank, in person in the city of New Orleans, and leaving the same in his hand, the president of said bank, Joseph H. Oglesby, being absent at the time of said service.

On Dec. 18th, 1883, I served a copy hereof on C. F. Buck, city attorney, by leaving the same at his office, 81 St. Charles street, city of New Orleans, in the hands of W. O. Hart, Esq.

(Signed) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

121 *Order. Leave Granted Board of Liquidation to File Intervention.*

Extract from Minutes.

NEW ORLEANS, FRIDAY, *December 14th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the application of the board of liquidation to file its petition of intervention and 3rd opposition herein, and was argued by counsel.

On consideration whereof it is ordered that said board of liquidation have leave to file the petition of intervention and 3rd opposition heretofore presented to the court on the 19th day of November, A. D. 1883.

122 *Intervention and 3rd Opposition of Board of Liquidation. Filed, with Leave of Court, December 14th*, 1883.

To the honorable the judges of the United States circuit court for the eastern district of Louisiana:

The petition of intervention and third opposition of the Board of Liquidation of the City Debt, a corporation created by the Legislature of Louisiana by act No. 58 of 1882, charged with the direction and control of the bonded debt of the city, respectfully shows—

That in the suit of Myra Clark Gaines *vs.* The City of New Orleans said plaintiff, under her execution, has levied, by service of interrogatories on Louisiana National Bank, upon forty thou-
123 sand dollars on deposit in said bank derived from a compromise between the city of New Orleans and the Louisville and Nashville Railroad Company, by which compromise the city conveyed and confirmed to said company certain real estate of the city for the purposes of the business of said company; that the answers

of the garnishees discloses said fund, its *deviations*, and the title under which the board claims the fund, as appears by said answers, specially referred to for fuller explanation and greater certainty.

This opponent and intervenor shows that it has an interest to intervene in this litigation and assert its title to such fund; that the real estate aforesaid for which said forty thousand dollars has been paid embraces a space of batture belonging to this city of 150 feet in width, extending from Canal to Poydras street, acquired by the city under its compromise with the riparian proprietors of date the 30th June, 1851, passed before H. B. Cenas, N. P., and under
124 the previous compromise between same parties of date the 20th September, 1820, passed before H. Lavergne, N. P.

2d. The one-half square between Julia, St. Joseph, Pilie, and New streets.

3d. The square between Julia, Notre Dame, Pilie, and New streets.

4th. The square between Girod, Notre Dame, Water, & Pilie streets.

That said half square and squares formed part of the batture accruing to the city under said acts of compromise with the riparian proprietors; were by the city withdrawn from public use (with other portions of said batture) in and about 1867; were then converted with said other portions into squares for sale by the city, and ever since 1867 said squares and half square have been and were, at the date of said compromises with the railroad company, private property of the city of New Orleans not dedicated to public use; that as to said space between Canal and Poydras street it
125 forms part of the batture acquired by the city in full ownership under said compromises of 1820 and 1851, and by said compromise with the railroad company all said real estate is alienated to the said companies for *its* private uses, as stated in said legislative acts and the compromise, all of which more fully appears by reference to said acts, the compromise with the companies of date the 11th October, 1882, before Samuel Flower, N. P., the plan of L. H. Pilie, filed in this suit, and the answers of the garnishees here specially referred to for fuller explanation and greater certainty.

That by the act No. 133 of 1880, creating the board of liquidation of the city debt, all property of this city, real and personal, not dedicated to public use, is conveyed to and vested in the said board for the purpose of the payment and liquidation of the said bonded debt of the city; that the city, by the ordinances of its council, of date the 16th June, 1880, number 6532, admin-
126 istration series, concurred in said dedication; that the bonded debt of the city, at the date of said act of 1880 and the amendatory act No. 58 of 1882 of the Legislature of Louisiana repeating said dedication, amounted to upwards of twelve millions of dollars, the greater portion of which is still unpaid; that the said bonded creditors of the city, at and from *to* the date of plaintiff's levy upon said fund, had accepted and availed of the said dedication in their favor by exchanging their bonds for the new bonds of the city issued under said act of 1858, all of which [have] been issued under the

faith and with the guarantee to the bonded debtors of the aforesaid dedication in their favor of all the property of the city, real and personal, not dedicated to public use, and said new bonds issued under said act of 1882 are still extant and unpaid.

That said sum of forty thousand dollars being derived by the city for and in consideration of its said real estate alienated to
127 said railroad companies, the same sum is within the dedication to the bonded debt contained in said act of 1880 and 1882, completed prior to the date of plaintiff's said levy, as stated in the answers of the garnishees. It follows that said fund is not liable to seizure on executions or otherwise, but accrues to and belongs to the board of liquidation, pet. and opponent herein, for the purposes of the trust and dedication aforesaid.

Opponent specially refers to the map made by Pilie and on file herein for fuller explanation and greater certainty, and as showing the nature, location, and extent of said real estate alienated by said compromise with the railroad companies.

Wherefore this petitioner prays leave to file this intervention and third opposition in this suit of Myra Clark Gaines *vs.* The City of New Orleans, No. — of the docket of this court; that the said
128 plaintiff, defendant, and the garnishees be cited to answer, and, after due proceedings, judgment be rendered in favor of this intervenor and 3rd opponent for said sum of forty thousand dollars; that said levy by plaintiff on said fund be decreed to be void and [of] no effect; that said levy be set aside; that the right of intervenor and third opponent to said fund under said legislative acts be recognized and enforced, and for general relief.

(S'g'd) MILLER & FINNEY,
Att'ys for Board of Liq.

Order. Intervention of Board of Liquidation Fixed for Trial Dec. 21. *Entered and Filed Dec.* 18*th*, 1883.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

129 On motion of Miller & Finney, solicitors for the board of liquidation, it is ordered that the intervention and third opposition of the said board herein be fixed for trial on Friday morning, the 21st Dec., 1883, at 11 o'clock, and that the parties be notified.

Continuance of Intervention.

Extract from Minutes.

NEW ORLEANS, FRIDAY, *December* 21*st*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the intervention and 3rd opposition of the board of liquidation.

And thereupon, by consent of the counsel for the parties herein, the said intervention was continued to Saturday, 5th January, 1884, at 11 a. m.

Answer of Compl'ts to Inter. of Board of Liq. Filed Dec. 21*st*, 1883.

U. S. Circuit Court for the E. Dist. of La.

MYRA C. GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

130 And now complainant, by the undersigned, her solicitors, to the petition of intervention and third opposition of the board of liquidation of the city debt, denies all and singular its allegations, except as may be hereinafter specially admitted.

Complainant specially denies that said intervenor, either through the said acts No. 133 of 1880, No. 58 of 1882, the ordinance No. 6532 of 16th June, 1880, or any other acts of the Legislature or ordinances of the city of New Orleans or other authority, has any ownership in or preferred lien and privilege over complainant to the property seized in this suit; and complainant alleges that if said statutes No. 133 of 1880, No. 58 of 1882, the ordinance No. 6532, or other subsequent statutes and ordinances, in any manner assume or were intended to convey to said board of liquidation such ownership and preferred lien and privilege over complainant to said property or in the premises to impair the rights of complainant

131 therein, the said statutes and ordinances are null and void for, among other, the reasons that the same would conflict with and impair the vested rights and impair the obligation of contracts, conventional and statutory, direct and implied, existing previous to said statute and ordinance of 1880, between complainant, as obligee, and the defendant, as obligor, and so adjudged to exist by the final decree rendered in this case of the 5th May, 1883; the cause and consideration of which said vested rights and obligation were, beside others—

(1.) Articles 2294, 3150 of the then civil code (being articles 8, 2315, and 3183 of the revised code).

(2.) The possession and assumed purchase by notarial act before Felix D'Armas, notary, acquired by the city of New Orleans from

Evariste Blanc on 24th September, 1834, of what is known as the Blanc tract.

(3.) The sales made by the then first municipality of New
132 Orleans to various persons through De Brieul and Delery, auctioneers, on March 10, 1837, of certain squares and lots in what is known in this suit as the Blanc tract, and the ordinance of the council of said municipality of 6th February, 1837, authorizing said sales, by which said first municipality bound itself in warranty, and whereby, under the law then existing, it was of the nature of said contracts of sale that said first municipality should relieve said purchasers, their heirs and assigns, from their subsequent liability to complainant for fruits, revenues, and value for use, an obligation which, by the laws governing said contracts of sale, inured to the benefit of and became exigible by said complainant, and which contracts as to said first municipality obligations in warranty were assumed by and became a valid obligation of the city of New Orleans by the act, and specially the 37th section thereof, entitled "An act to consolidate the city of New Orleans and provide for the government and administration of its affairs," approved February
133 23d, 1853, and which obligation of said contract was reacknowledged and made binding on said city of New Orleans by the act, and especially the 34th section thereof, entitled "An act to extend the limits of the parish of Orleans," &c., approved March 16th, 1870.

(4.) The agreement set forth in the bill of complaint was adjudged by the decree of the 5th May, 1883, in this suit, by which the said city of New Orleans, previous to the filing of said bill of complaint on 7th August, 1879, agreed and bound herself to the purchasers, their heirs and assigns, holding title under said sales of the 10th March, 1837, to pay to this complainant whatever judgments should be rendered in her favor against them or any of them for fruits, revenues, and value for use.

And in virtue whereof said vested rights and obligations thus acquired and recognized by said decree of May 5th, 1883, constitute in favor of complainant, Myra C. Gaines, against the defendant,
134 The City of New Orleans, a contract in the intendment of the tenth section of article first of the Constitution of the United States, and are protected by the 11th article of the constitution of Louisiana of 1879, and rendering the said statutes No. 133 of 1880, No. 58 of 1882, and ordinance 6532 or other subsequent ordinances, statutes, or State constitutional provisions null and void, in so far as they in any manner assume or were intended to impair the said vested rights and obligations of the complainant against the city of New Orleans, and this, whether striking at the obligation itself or simply the remedy for its enforcement.

Complainant, in support of her foregoing averments, refers to said act of sale of Evariste Blanc to the city of New Orleans, before Felix D'Armas, notary, of 26th September, 1834, being her offering No. XIV in this suit, No. 8825; the act of deposit, by Denis Prieur, mayor of New Orleans, before F. D'Armas, notary, on 22 March,
135 1837, and the process-verbal of sale on behalf of the first mu-

nicipality of New Orleans, by Debreuil & Delery, auctioneers, on March 10, 1837, and the ordinance authorizing said sale annexed to said act of deposit, being of her said offering No. IX; the bill and amended bill of complaint in said suit No. 8825 and the answers thereto, and the said decree of May 5th, 1883, and which she asks may be considered part of this answer.

Wherefore complainant, as respondent herein, prays that the said petition of intervention and 3rd opposition be dismissed, with costs.

(S'g'd) WM. REED MILLS,
" ALFRED GOLDWHAITE,
" J. WARD GURLEY, JR., *Sol's.*

Motion to Pay Funds in Court Continued.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *December* 22*d*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

136 MYRA C. GAINES *vs.* THE CITY OF NEW ORLEANS. } No. 8825.

By consent of counsel the rule on garnishee to pay fund seized in registry is continued until Saturday, February 5th, 1884, at 11 o'clock a. m.

Note of Evidence Offered. Filed January 5th, 1884.

U. S. Circuit Court.

MYRA C. GAINES *vs.* CITY OF NEW ORLEANS. } No. 8825.

Note of evidence on rehearing of intervention of board of liquidation.

The intervenor offers in evidence the answers of the garnishees, The Louisiana National Bank, in suit of Gaines *vs.* City, No. 8825 of the docket of this court, and exhibits annexed.

(Copied on pages Nos. 10, 25, 26, 28.) [12, 22, 27, 28, 30 in pencil].

Intervention of Board of Liquidation Heard and Submitted.

137 Extract from Minutes.

NEW ORLEANS, SATURDAY, *January 5th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the intervention and 3d opposition of the board of liquidation, Miller & Finney, for intervenor; A. Goldwhaite and J. Ward Gurley, Jr., for complainant; C. F. Buck, city attorney, not appearing.

Whereupon the said counsel for the board of liquidation submitted the intervention of said board upon the answers of the garnishees and the exhibits annexed, and the court took the same under advisement.

Rule of Compl't on La. Nat. Bank to Deposit, &c.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *January 5th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

138 MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the rule herein taken by the complainant on The Louisiana National Bank, garnishee, to deposit the fund seized herein, and was argued by the counsel for the parties respectively, and submitted.

Whereupon the court took the same under advisement.

Decree on Intervention of Mrs. Sarah M. King (La. Nat. Bank, Garnishee).

Extract from Minutes.

NEW ORLEANS, TUESDAY, *February 16th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS, THE LOUISIANA NAT. BANK, Garnishee. } No. 8825.

This cause came on to be heard on the intervention of Sarah M. King, administratrix of the succession of W. W. King, the answers

139 thereto, and the evidence, and after hearing parties, by their counsel, upon consideration by the court—

It is ordered, adjudged, and decreed that the intervenor and third opponent, Sarah M. King, administratrix of the succession of W. W. King, do have judgment against The City of New Orleans and against The Louisiana National Bank for one thousand dollars, with interest from judicial demand, and that the said sum be paid out of the sum of forty thousand dollars admitted to be in the possession of said bank by the answers of J. H. Oglesby, president.

And it is further ordered that the other questions submitted in this cause are reserved.

Order. Louisiana Nat. Bank to Deposit Money in Registry of Court.

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *February 17th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

140 MYRA CLARK GAINES
vs.
THE CITY OF NEW ORLEANS, THE LOUISIANA NATIONAL BANK, Garnishees. } No. 8825.

This cause coming on to be heard on the rule taken upon the garnishees, The Louisiana Nat. Bank, by complainant's solicitors and the solicitors in the case of The New Orleans Gas-Light Company *v.* The City of New Orleans *et als.*, No. 10444 of the docket of this court, and after hearing counsel for parties upon the consideration of the law and evidence, it is ordered by the court that the rule be made absolute, and that the Louisiana National Bank do forthwith pay into the registry of this court the sum of forty thousand dollars, less the amount decreed to be paid to Mrs. Sarah M. King, executrix of succession of W. W. King, entered February 16th, 1886, the said sum being the amount deposited with said bank with a special trust
141 and admitted by the answers to be in the custody of the said The Louisiana National Bank.

Order Vacating Order of Feb'y 17 to Deposit, &c.

Extract from Minutes.

NEW ORLEANS, FRIDAY, *February 19th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

Ordered, That the order herein entered on the 17th day of February, 1886, making the rule against the Louisiana National Bank, garnishees, absolute, and directing said garnishees to pay into the

registry of this court the sum of forty thousand dollars, less the amount decreed to be paid to Mrs. Sarah M. King, executrix of the succession of W. W. King, entered February 16th, 1886, the said sum being the amount deposited with the said bank with a special trust and admitted by the answers to be in the custody of the said bank, be vacated, the parties in interest to be heard by brief
142 within five days as to the propriety of the court ordering the garnishees, under circumstances as this case presents, to deposit said sum in the registry of this court.

Order. Louisiana Nat. Bank to Deposit Money in Registry of the Court.

Extract from Minutes.

NEW ORLEANS, MONDAY, *March 15th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

This cause coming on to be heard on the motion of complainant's counsel for the garnishee, The Louisiana National Bank, to show cause why it, the garnishee, should not be required to pay the forty thousand dollars admitted to be held by it for the city of New Orleans into the registry of this court, and the parties thereto having been heard by their solicitors, and the Board of Liquidation
143 appearing, resisting therein by their counsel, and the solicitors in cause No. 10444 representing the New Orleans Gas-Light Company, appearing herein and joining with plaintiffs in motion, and after full consideration of the law and evidence, it is ordered by the court that the motion of complainant be allowed and that the Louisiana National Bank do, within five days, deposit, subject to the further order of this court, in the registry of the court the sum of forty thousand dollars in the hands of the said The Louisiana National Bank, deposited by the City of New Orleans, specially to be retained under an agreement between the City of New Orleans and The Louisville and Nashville R. R. Company, less the amount heretofore paid out of said fund to Mrs. Sarah M. King, executrix of the estate of Wm. W. King, and that the defendant in motion, The Louisiana National Bank, do have notice of this order.

144 *Motion of Louisiana Nat. Bank for Writ of Error. Filed March 16th*, 1886.

MYRA CLARK GAINES
vs.
THE CITY OF NEW ORLEANS. } No. 8825.

On motion of Henry C. Miller, of counsel for the Louisiana National Bank, the garnishee herein, and on suggesting that the

said bank is aggrieved by the final decree rendered in this cause on the 15th March, 1886, ordering and adjudging that the said bank pay into the registry of the court the sum of forty thousand dollars, and on further suggesting that the bank, as garnishee, desires to take a writ of error from said decree:

It is now ordered that the Louisiana National Bank, the garnishee herein, be allowed a writ of error from said judgment, to be a supersedeas and stay execution, returnable to the Supreme Court of the United States on the first day of the ensuing term upon said bank furnishing bond, according to law, in the sum of ten thousand dollars, conditioned as the law directs.

145 *Order. Motion for Writ of Error Fixed for March 20th*, 1886.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *March 16th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

It is ordered by the court that the motion this day filed by the Louisiana National Bank, garnishee herein, for a writ of error from the decree rendered on the 15th March, 1886, to be a supersedeas and stay of execution, returnable to the Supreme Court of the United States on the first day of the ensuing term thereof, be set down for hearing on Saturday, March 20th, 1886, and that counsel for parties in interest be notified thereof.

Motion for Writ of Error Heard & Submitted.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *March 20th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

146 MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

The motion of the garnishee, The Louisiana National Bank, for a writ of error in this cause to operate — a supersedeas came on this day to be heard, and, after hearing argument from counsel for the parties respectively, was submitted, and the court took time to advise.

Order. Writ of Error Granted Louisiana National Bank.

Extract from Minutes.

NEW ORLEANS, MONDAY, *March 22d*, 1886.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

This cause came on to be heard on the motion of the Louisiana National Bank, the garnishee herein, for a writ of error from the judgment and decree rendered in this cause on the 15th day of March, 1886, and was argued by counsel for the parties re-
147 spectively; whereupon and upon consideration thereof it was ordered that said motion be granted, and accordingly that the said garnishee herein be allowed a writ of error from said judgment, to be a supersedeas and stay execution, returnable to the Supreme Court of the United States on the first day of the ensuing term upon said bank furnishing bond, according to law, in the sum of ten thousand dollars, conditioned as the law directs.

Bond for Writ of Error of Louisiana National Bank. Filed March 24th, 1886.

Know all men by these presents that we, The Louisiana National Bank, as principal, and Joseph H. Oglesby, as surety, are held and firmly bound, jointly and severally, unto the heirs and legal representatives of Myra Clark Gaines, the complainant herein, and of her succession, to wit, Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zuline Whitney, heirs of said
148 Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of said Myra Clark Gaines, said tutor administering said succession, and to any other heirs and legal representatives of said succession, if any, The Board of Liquidation of the City Debt, The City of New Orleans, The New Orleans Gas-Light Company, John Klein & Co., intervenor- and parties herein, obligees, and to each of said obligees entitled to sue upon this bond, in the full sum of ten thousand dollars, lawful money of the United States, to be paid to the said Hattie L. Whitney, tutrix, *et als.*, the obligees in this bond, and to each and every one of them who may become entitled to sue upon and enforce this bond, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of March, in
149 the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately at a circuit court of the United States, fifth judi-

cial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court wherein Myra Clark Gaines is plaintiff and —— —— —, judgment was rendered against the said Louisiana National Bank, the garnishee, and the said Louisiana National Bank having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Hattie L. Whitney, tutrix, *et als.*, obligees, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Louisiana National Bank shall prosecute its writ to effect
150 and answer all damages and cost- if it fail to make — plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) THE LOUISIANA NATIONAL BANK, [L. S.]
Per J. H. OGLESBY, *Pres't.* [L. S.]
J. H. OGLESBY. [L. S.]

Bond approved.

(Sig'd) EDWARD C. BILLINGS, *Judge.*

(Endorsed on back.)

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

Personally appeared Joseph H. Oglesby, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, and is worth the full sum of ten thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) J. H. OGLESBY.

151 Subscribed and sworn before me this 24th day of March' 1886.

(Signed) E. R. HUNT,
Commissioner U. S. Circuit Court,
Eastern District of Louisiana.

Motion and Order. Appeal Granted Louisiana National Bank.

Extract from Minutes.

NEW ORLEANS, THURSDAY, *March 25th*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES *vs.* CITY OF NEW ORLEANS. } No. 8825.

On motion of Henry C. Miller, solicitor for the Louisiana National

Bank, and on suggesting that the said Louisiana National Bank is advised and believes that there is error to its prejudice in the final decree herein rendered on March 15th, 1886, decreeing that said Louisiana National Bank pay the sum of forty thousand dollars into the registry of the court, less $1,000 heretofore paid to
152 Mrs. King, executrix, and on further suggesting that the said Louisiana National Bank desires to obtain an appeal from said decree, it is now ordered that the said Louisiana National Bank be allowed an appeal from said final decree, returnable to the Supreme Court of the United States on the second Monday of October next, said appeal to be a supersedeas and to stay execution of said final decree, upon the said Louisiana National Bank furnishing bond and security in the sum of ten thousand dollars, conditioned as the law directs.

Motion and Order. Appeal Granted Board of Liquidation.

Extract from Minutes.

NEW ORLEANS, THURSDAY, *March 25th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MYRA CLARK GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

153 On motion of Henry C. Miller, of counsel for the Board of Liquidation of the City Debt, intervenor herein, and on suggesting that the said intervenor is advised and believes that there is error to its prejudice in the final decree herein rendered on the 15th March, 1886, decreeing that the Louisiana National Bank, garnishee herein, pay the sum of forty thousand dollars into the registry of the court, less $1,000 heretofore paid Mrs. S. M. King, executrix, and on further suggesting that said Board of Liquidation of the City Debt desires to obtain an appeal, it is now ordered that the Board of Liquidation of the City Debt be allowed an appeal to review said decree, returnable to the Supreme Court of the United States on the second Monday of October next, and said appeal to be a supersedeas, and instead and exclusive of said decree, upon the said Board of Liquidation of the City Debt furnishing a bond and surety in the sum of ten thousand dollars, conditioned as the law directs.

154 *Bond for Appeal, Board of Liquidation. Filed March 25th*, 1886.

Know all men by these presents that we, The Board of Liquidation of the City Debt, as principal, and Joseph H. Oglesby, as surety, are held and firmly bound, jointly and severally, unto the heirs and legal representatives of Myra Clark Gaines and of her succession, to wit, Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zuline Whitney, heirs of Myra Clark Gaines; James

Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of Myra C. Gaines; said tutor and tutrix administering said succession, as appears by the judgment of the civil district court of the parish of Orleans herewith filed and hereto annexed for reference, and to any other legal representatives of said succession, if any, The City of New Orleans, The Louisiana National Bank, The New Orleans Gas-Light Company, and John Klein & Company, obligees herein, and to each
155 and every of said obligees entitled to sue upon or interested in this bond, in the full and just sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Hattie L. Whitney, tutrix, *et als.*, the obligees aforesaid, and to each and every of them that may become entitled to recover on and enforce this bond, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 24th day of March, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said Board of Liquidation of the City Debt having heretofore, to wit, on the 24th day of March, 1886, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 15th day of March, 1886, by the circuit court of the United States for the fifth circuit, holding ses-
156 sions in and for the eastern district of Louisiana, in the suit of Myra Clark Gaines *vs.* The City of New Orleans, The Louisiana National Bank, garnishee; The City of New Orleans *et als.*, intervenors and parties, No. 8825 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden The Board of Liquidation of the City Debt shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) THE BOARD OF LIQUIDATION,
Pp. J. H. OGLESBY, *Pt.* [L. S.]
J. H. OGLESBY. [L. S.]

Bond approved.

(S'g'd) EDWARD C. BILLINGS, *Judge.*

March 25, 1886.

Endorsed on back: No. 8825. United States circuit court,
157 eastern district of Louisiana. Myra Clark Gaines *vs.* The City of New Orleans. Bond for appeal.

J. H. Oglesby, the surety on within bond, being duly sworn, deposes that he resides in New Orleans, and is worth over and above all his debts and liability the sum of ten thousand dollars.

(Sig'd) J. H. OGLESBY.

Subscribed and sworn before me March 25th, 1886.
(S'g'd) E. R. HUNT,
Commissioner United States Circuit Court and Eastern District of Louisiana.

Copy of Judg't, Civil District Court, Recognizing Heirs Filed with Bond. Filed March 25th, 1886.

Civil Dist. Court, Parish of Orleans, "Div. B."

Succession of MYRA CLARK GAINES. No. 13135.

The petition of Hattie L. Whitney respectfully represents
158 that she resides in the city of New Orleans and State of Louisiana; that she is the mother of the minor children, William Wallace Whitney, Myra Gaines Whitney, and Zuline Whitney, and their natural tutrix, duly qualified according to law; that the said minor children are heirs-at-law in conjunction with the minor children of James Y. Christmas of the late Myra Clark Gaines, who died in New Orleans on the 9th day of January, 1885, leaving property in said city and State; that the said minors Whitney inherit through their father, William Wallace Whitney, deceased, the son of the late Myra Clark Gaines, and the said minors Christmas inherit through their mother, the deceased daughter of Myra Clark Gaines.

Your petitioner shows that, as the mother and natural tutrix of her said minor children and heirs-at-law and representing them, she is entitled to administer the succession of Myra Clark Gaines, in conjunction with one James Y. Christmas, the natural tutor
159 of his minor children, William Wallace Christmas, Rhoda Bettie Christmas, and Louis Miller Christmas, who has filed his petition in this hon. court to administer the succession of Myra Clark Gaines as natural tutor and representing his aforenamed children.

Wherefore petitioner prays that she, Hattie L. Whitney, be recognized as tutrix of her minor children aforenamed and representing them, and as such and in her capacity aforesaid entitled to administer the succession of Myra Clark Gaines in conjunction with James Y. Christmas, natural tutor of his minor children above named.

And James Y. Christmas herein intervenes and joins in the prayer of the petitioner, Mrs. Hattie L. Whitney, and recognizes her right as natural tutrix of her said minor children to the joint administration with him of the succession of Myra Clark Gaines, and prays that he also, as natural tutor of his minor children aforesaid, be recognized as entitled jointly with the said Mrs. Hattie L.
160 Whitney to the administration of said succession in his capacity aforesaid without further formality or requirements.

(Signed) A. GOLDWHAITE &
" THOMAS J. SEMMES,
Att'ys for Heirs.

Order.

Considering the allegations and prayer of the within petition, let Mrs. Hattie L. Whitney and James Y. Christmas, natural tutrix and

natural tutor of their minor children and grandchildren of Mrs. Myra Clark Gaines, be, and they are hereby, authorized in their above capacities to administer upon the succession of said Mrs. Myra Clark Gaines.

New Orleans, March 17th, 1886.

(Signed) W. T. HOUSTON, *Judge.*

(4 La. law stamps of 50 cts. each, cancelled.)

A true copy.

[SEAL.] (Signed) M. A. McDONALD,
D'y Clerk.

161 *Bond for Appeal of Louisiana National Bank. Filed March 29th, 1886.*

Know all men by these presents that we, The Louisiana National Bank, as principal, and Joseph H. Oglesby, as surety, are held and firmly bound, jointly and severally, unto the heirs and legal representatives of Myra Clark Gaines and of her succession, to wit, Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zuline Whitney, heirs of Myra Clark Gaines; James T. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of Myra C. Gaines, said tutor and tutrix administering said succession, as appears by the judgment of the civil district court of the parish of Orleans herewith filed and hereto annexed for reference, and to any other legal representatives of said succession, if any, The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co., obligees herein, and to each and every of said
162 obligees entitled to sue upon or interested in this bond, in the full and just sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Hattie L. Whitney, tutrix, *et als.*, the obligees aforesaid, and to each and every of them that may become entitled to recover and enforce this bond, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 24th day of March, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said The Louisiana National Bank having heretofore, to wit, on the 24th day of March, 187–, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 15th day of March, 1886, by the circuit court of the United States for the fifth circuit, holding sessions in and for
163 the eastern district of Louisiana, in the suit of Myra Clark Gaines *vs.* The City of New Orleans, The Louisiana National Bank, garnishee; The City of New Orleans *et al.*, intervenor and parties, No. 8825 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden The Louisiana National Bank shall prosecute its said

appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

(Signed) THE LOUISIANA NATIONAL BANK.
J. H. OGLESBY, *Pres't.* [L. S.]
J. H. OGLESBY. [L. S.]

Bond approved.

(S'g'd) EDWARD C. BILLINGS, *Judge.*

Endorsed on back: No. 8825. United States circuit court, eastern district of Louisiana. Myra Clark Gaines *vs.* City of New Orleans. Bond for appeal.

164 J. H. Oglesby, the surety on the within bond, deposes that over and above all his debts and liabilities he is worth the sum of ten thousand dollars, and that he resides in New Orleans.

(Signed) J. H. OGLESBY.

Subscribed and sworn before me March 29th, 1886.

(Signed) E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

165 *Agreement as to Original Maps to go in Record. Filed July 21st,* 1886.

U. S. Circuit Court.

MYRA C. GAINES
vs.
CITY OF NEW ORLEANS. } No. 8825.

On appeal of The Louisiana National Bank.

It is agreed the maps in evidence shall go up in the record of appeal in the original.

(Signed) THOS. J. SEMMES,
Of Counsel for Appellees.

166 *Copy of Writ of Error. Filed in Clerk's Office March 24th,* 1886

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Myra Clark Gaines, complainant, now deceased, her heirs and legal representatives being Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulume Whitney, heirs of said Myra Clark Gaines; James T. Christmas,

natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, and The City of New Orleans is the defendant,
167 The *the* Louisiana National Bank is garnishee, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein and Company are intervenors and parties, a manifest error hath happened, to the great damage of the said The Louisiana National Bank, garnishee, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected,
168 the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

Endorsed on back: United States circuit court. No. 8825. Myra Clark Gaines *versus* The City of New Orleans *et als.* Writ of error. Filed March 24th, 1886. E. R. Hunt, clerk.

Copy of the writ of error herein lodged by The Louisiana National Bank, plaintiff in error, for Hattie L. Whitney, tutrix of the heirs of Myra Clark Gaines; James T. Christmas, tutor of heirs, and other defendant- in error named in the writ.

(S'g'd) HENRY C. MILLER,
Att'y for Pl'f in Error.

169 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 168 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, [in] the case of Myra Clark Gaines *vs.* City of New Orleans, Louisiana National Bank, garnishee, No. — of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of August, A. D. 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 12 day of August, A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

170 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Myra Clark Gaines, complainant, now deceased, her heirs and legal representatives being Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulime Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, and The City of New Orleans is the defendant, The Louisiana National Bank is garnishee, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are intervenors & parties, a manifest error hath happened, to the great damage of the said The Louisiana National Bank, the garnishee, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable M. R. Waite, Chief Justice of the said Su-

preme Court of the United States, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

171 [Endorsed:] United States circuit court. No. 8825. Myra Clark Gaines *versus* The City of New Orleans, The Louisiana National Bank, garnishee, The Board of Liquidation, & other intervenors. Writ of error. Filed March 24, 1886. E. R. Hunt, clerk.

172 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mrs. Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines, and as such administering the succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any; The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

173 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, garnishee, plaintiff in error, *vs.* Hattie L. Whitney, tutrix of the heirs of Myra Clark Gaines; James T. Christmas, natural tutor of the heirs of Myra Clark Gaines; City of New Orleans, Board of Liquidation of City Debt, New Orleans Gas-Light Company, John Klein &

Co., defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. Marshal, and on the 25 day of March, 1886, I served a true duplicate of the within citation in error on Mrs. Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zerliene Whitney, heirs of Myra Clark Gaines, and as such administering the succession of Myra Clark Gaines, defendants in error, by handing the same personally to A. Goldthwaite, Esq., one of the attornies of record of the defendants in error, and leaving the same in his hands in person in the city of New Orleans, the said defendant in error residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. Marshal, E. D. of La.
JNO. BAKER,
Dep'ty U. S. Mar.

John Baker, having [been] duly sworn, doth dispose and say that he is a duly qualified dep'ty of R B. Pleasants, U. S. marshal of the E. D. of La., and that the return as stated [and] above set fourth is true.

JNO. BAKER,
Dep'ty U. S. Mar.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

174 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, and as such administering the succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representative of her, said M. C. Gaines, and of her succession, if any; The City of New Orleans, The Board of Liqui-

dation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

175 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, plaintiff in error, *vs.* Hattie L. Whitney, natural tutrix, &c.; James Y. Christmas, natural tutor, &c., *et als.*, defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. marshal, and on the 25 day of March, 1886, I served a true duplicate of the within citation in error on James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, heirs of Myra Clark Gaines, and as such administering the succession of Myra Clark Gaines, defendants in error, by handing the same personally to A. Goldtwhaite, Esq., one of the attorn*ies* of record of the defendants in error, and leaving the same in his hands in person in the city of New Orleans, the said defendant in error residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. Marshal, E. D. of La.
JNO. BAKER,
Deputy U. S. Marshal.

John Baker, having [been] duly sworn, doth d*is*pose and say that he is a duly qualified dep'ty of R. B. Pleasants, U. S. marshal of the eastern district of La., and that the return as stated [and] above set fourth is true.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

176 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Wash-

ington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succes-ion, if any; The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

177 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, garnishee, plaintiff in error, *vs.* Hattie L. Whitney, natural tutrix, &c.; James Y. Christmas, natural tutor, &c., *et als.*, defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. marshal, and on the 29th March, 1886, I served a true duplicate of the within citation in error on The City of New Orleans, defendant in error, by handing same to Hon. J. V. Guillotte, mayor of the said city of New Orleans, in person, in the city of New Orleans, & leaving the same in his hands.

R. B. PLEASANTS,
U. S. Marsh'l, East'n Dist. of La.,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, having been duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, United States marshal for the eastern district of Louisiana, and that the return as stated above is true.

JNO. BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

178 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The Board of Liquidation of the City Debt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any; The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

179 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, garnishee, plaintiff in error, *vs.* Hattie L. Whitney, natural tutrix, &c.; James Y. Christmas, natural tutor, &c., *et als.*, defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. marshal, and on the 25 day of March, 1886, I served a true duplicate of the within citation in error on The Board of Liquidation of the City Debt, defendants in error, by handing the same to Mr. Joseph H. Oglesby, whom I know to be the president of said board of liquidation, and leaving the same in his hands at the La. National Bank in the city of New Orleans.

R. B. PLEASANTS,
U. S. Mar. of E. D. of La.
JNO. BAKER,
Dep'ty U. S. Mar.

John Baker, having [been] duly sworn, doth dispose and say that he is a duly qualified dep-ty of R. B. Pleasants, U. S. marshal of the

eastern district of La., and that the return as stated [and] above set fourth is true.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

180 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The New Orleans Gas-Light Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any; The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

181 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, garnishee, plaintiff in error, *vs.* Hattie L. Whitney, natural tutrix, etc.; James Y. Christmas, natural tutor, *et als.*, defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. marshal, and on the 25 day of March, 1886, I served a true duplicate of the within citation in error on the New Orleans Gas-Light Company, defendant in error,

by handing the same personally to Mr. Seaward, whom I know to be president of said company, in the city of New Orleans.

R. B. PLEASANTS,
U. S. Marshal, E. D. of La.
JNO. BAKER,
Dep'ty U. S. Mar.

John Baker, having [been] duly sworn, doth dispose and say that he is a duly qualified dep'ty of R. B. Pleasants, U. S. marshal of the eastern district of La., and that the return as stated [and] above set fourth is true.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

182 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to John Klein & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Louisiana National Bank, garnishee, is plaintiff in error and Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any; The City of New Orleans, The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, and John Klein & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Louisiana National Bank, garnishee, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

183 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. The Louisiana National Bank, garnishee, plaintiff in error, *vs.* Hattie L. Whitney, natural tutrix; James Y. Christmas, natural tu*trix*, *et als.*, defendants in error. Citation. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 25, 1886, by the U. S. marshal, and on the 25 day of March, 1886, I served a true duplicate of the within citation in error on John Klein & Co., defendants in error, by handing the same to Mr. John Klein in person in *in* the city of New Orleans.

R. B. PLEASANTS,
U. S. Marshal, E. D. of La.
JNO. BAKER,
Dep'ty U. S. Mar.

John Baker, having [been] duly sworn, doth d*i*spose and say that he is a duly qualified dep'ty of R. B. Pleasants, U. S. marshal of the eastern district of La., and that the return as stated [and] above set fourth is true.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.
E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

184 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, and as such administering succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, *wherein* in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Louisiana National Bank, garnishee; The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the

Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

185 [Endorsed:] United States circuit court. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 27, 1881, by the U. S. marshal, and on the 27th March, 1886, I served a true duplicate of the within citation of appeal on Mrs. Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulienne Whitney, and as such administering succession of Myra Clark Gaines, defendant herein, by handing the same personally to Mr. A. Goldthwaite, one of the attorn*ies* of record of the defendants, and leaving the same in his hands in the city of New Orleans, the said defendant residing out of the eastern dist. of Louisiana.

R. B. PLEASANTS,
U. S. Marsh'l, Eastern Dist. of La.,
By JOHN BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful & duly qualified deputy of R. B. Pleasants, U. S. marshal east'n dist. of La., and that the return as above stated is true & correct.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

186 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, and as such administering the succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered and filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis

M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Louisiana National Bank, garnishee; The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

187 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 27, 1886, by the U. S. marshal, and on the 27th March, 1886, I served a true duplicate of the within citation of appeal on James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, and as such administering the succession of Myra Clark Gaines, defendants herein, by handing same personally to A. Goldthwaite, Esq., one of the attorn*ie*s of record of the defendants, and leaving the same in his hands in the city of New Orleans, the said defendants residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. Marsh'l, Eastern Dist. of Louisiana,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, U. S. marshal, eastern district of Louisiana, and that the return as above stated is true and correct.

JOHN BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

188 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representative of her, said M. C. Gaines, and of her succession, if any, complainants, The City of New Orleans defendant; The Louisiana National Bank, garnishee; The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

189 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 27, 1886, by the U. S. marshal, and on the 29th March, 1886, I served a true duplicate of the within citation of appeal on The City of New Orleans, defendant herein, by handing same to the Hon'ble J. V. Guillotte, mayor of the said city of New Orleans, in person in the city of New Orleans, & leaving the same in his hands.

R. B. PLEASANTS,
U. S. Marsh'l, Eastern Dist. of Louisiana,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, having been duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, U. S.

marshal for the east'n dist. of La., and that the return as above stated is true & correct.

JNO. BAKER.

Subscribed and sworn before me March 29, 1886.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

190 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The Louisiana National Bank, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, *wherein* in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Louisiana National Bank, garnishee; The New Orleans Gas Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

191 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received March 27, 1886, by the U. S. marshal, and on the 27th March, 1886, I served a true duplicate of the within citation of appeal on the Louisiana National Bank of this city, defendants herein, by handing same to Mr. Jos. H. Oglesby in person, whom I

know to be president of said bank, and leaving the same in his hands.

R. B. PLEASANTS,
U. S. Marshal, Eastern Dist. of Louisiana,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, U. S. marshal, eastern dist. of La., and that the return as above stated is true and correct.

——.

Subscribed and sworn before me March 29, 1886.
E. R. HUNT,
Commissioner United States Circuit Court,
District of Louisiana.

192 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The New Orleans Gas-Light Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Louisiana National Bank, garnishee; The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

193 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886. E. R. Hunt, clerk.

Marshal's Return.

Received Mar. 27, 1886, by the U. S. marshal, and on the 27th March, 1886, I served a true duplicate of the within citation of appeal on The New Orleans Gas-Light Company, defendant herein, by handing same to Mr. Sieward in person, whom I know to be the president of said N. O. Gas-Light Company, & leaving the same in his hands in New Orleans.

R. B. PLEASANTS,
U. S. Marshal, Eastern District of La.,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, U. S. marshal eastern dist. of La., and that the return as above stated is true & correct.

JNO. BAKER.

Subscribed and sworn before me March 29, 1886.
E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

194 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to John Klein & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Louisiana National Bank, garnishee; The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Board of Liquidation of the City Debt, intervenor, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

195 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed March 29, 1886.
E. R. HUNT, *Clerk.*

Marshal's Return.

Received Mar. 27, 1886, by the U. S. marshal, and on the 27th March, 1886, I served a true duplicate of the within citation of appeal on John Klein & Co., defendants herein, by handing same to Mr. John Klein in person in the city of New Orleans and leaving same in his hands.

R. B. PLEASANTS,
U. S. Marsh'l, Eastern Dist. of La.,
By JOHN BAKER,
Dept'y U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, U. S. marshal eastern dist. of La., and that the return as above stated is true & correct.

——— ———.

Subscribed and sworn before me March 29, 1886.
E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

196 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to John Klein & Co., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

197 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. Marshal, and on the 30 March, 1886, I served a true duplicate of the within citation of appeal on John Klien & Co., appellees herein, by handing same to Mr. John Klien in person, one of the members of said firm, and leaving same in his hands in the city of New Orleans.

R. B. PLEASANTS,
U. S. M'l, E. D. of La.,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a duly qualified deputy of R. B. Pleasants, U. S. marsh'l for the eastern district of Louisiana, and that the return of service as above set forth is true & correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day of April, 1886.

H. J. CARTER,
Deputy Clerk U. S. Circuit Court,
Eastern District of Louisiana.

198 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, and as such administering the succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered and filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any,

complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

199 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. marshal, and on the 30th March, 1886, I served a true duplicate of within citation of appeal on Mrs. Hattie L. Whitney, natural turix of W. W. Whitney, M. G. Whitney, and Zulienne Whitney, heirs of Myra Clark Gaines, and as such administering the succession of Myra Clark Gaines, appellee herein, by handing the same personally to A. Goldtwhaite, one of the attorneys of record of the defendant, and leaving the same in his hands in person in the city of New Orleans, the said appellee, Hattie L. Whitney, residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. M'l, E. D. of La.,
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a duly qualified deputy of R. B. Pleasants, United States marshal eastern district of Louisiana, and that the return of service as above stated is true and correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day April, 1886.

H. J. CARTER,
Deputy Clerk U. S. Circuit Court,
Eastern District of La.

200 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, and as such administering the succession of Myra Clark Gaines, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered and filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States this 29 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

201 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. marshal, and on the 30th March, 1886, I served a true duplicate of the within citation of appeal on James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas and as such administering the succession of Myra Clark Gaines, appellee herein, by handing same personally to A. Goldthwait, one of the attorneys of record of the defendant, and leaving the same in his hands in person in the city of New Orleans, the said appellee, James Y. Christmas, residing out of the eastern district of Louisiana.

R. B. PLEASANTS,
U. S. Marsh'l, E. D. of La.
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a duly qualified deputy of R. B. Pleasants, United States marshal, eastern district of Louisiana, and that the return of service as above stated is true and correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day of April, 1886.

H. J. CARTER,
Deputy Clerk U. S. Circuit Court,
Eastern District of Louisiana.

202 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washton on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

203 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* The City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. marshal, and on the 2nd April, 1886, I served a true duplicate of the within citation of appeal on The City of New Orleans, appel-ee herein, by handing same to the Hon'ble J. V. Guillotte, mayor of said city of New Orleans, in person, and leaving the same in his hands in said city of New Orleans.

R. B. PLEASANTS,
U. S. M'l, E. D. of La.
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a duly qualified deputy of R. B. Pleasants, U. S. marshal for the eastern district of Louisiana, and that the return of service as above set forth is true & correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day of April, 1886.

H. J. CARTER,
Deputy Clerk U. S. Circuit Court,
Eastern District of Louisiana.

204 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The Board of Liquidation of the City Debt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, and Louis M. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29 day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

205 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. marshal, and on the 30th March, 1886, I served a true duplicate of the within citation of appeal on The Board of Liquidation of the City Debt, appel-ee herein, by handing the same to Mr. Jos. H. Oglesby, whom I know to be

president of said corporation, in person, & leaving same in his hands in New Orleans.

R. B. PLEASANTS,
U. S. M'l, E. D. of La.,
By JNO. BAKER,
Deputy U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a duly qualified deputy of R. B. Pleasants, U. S. marshal eastern district of Louisiana, and that the return of service as above set forth is true and correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day of April, 1886.
H. J. CARTER,
Deputy Clerk U. S. Circuit Court,
Eastern District of Louisiana.

206 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The New Orleans Gas-Light Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for an appeal entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of said Myra Clark Gaines; James Y. Christmas, natural tutor of W. W. Christmas, Rhoda B. Christmas, as heirs of Myra Clark Gaines, said tutor and tutrix administering said succession of Myra Clark Gaines and any other legal representatives of her, said M. C. Gaines, and of her succession, if any, complainants; The City of New Orleans, defendant; The Board of Liquidation of the City Debt, The New Orleans Gas-Light Company, John Klein & Co., intervenors, are appellees, and The Louisiana National Bank, garnishee, is appellant, to show cause, if any there be, why the decree rendered against the said Louisiana National Bank, garnishee, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

207 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8825. Myra Clark Gaines *vs.* The City of New Orleans *et als.* Citation of appeal. Filed April 6, 1886. H. J. Carter, d'y clerk.

Marshal's Return.

Received Mar. 30, 1886, by the U. S. marshal, and on the 30th March, 1886, I served a true duplicate of the within citation of appeal on the New Orleans Gas-Light Company, appel-ees herein, by handing the same to Mr. A. H. Sieward, whom I knew to be president of said company, and leaving the same in his hands in the city of New Orleans.

R. B. PLEASANTS,
U. S. Marsh'l, E. D. of La.
By JNO. BAKER,
Dep'ty U. S. Mar.

I, John Baker, being duly sworn, do depose and say that I am a lawful and duly qualified deputy of R. B. Pleasants, United States marshal, eastern district of Louisiana, and that the return of service as above set forth is true and correct.

JOHN BAKER.

Sworn to and subscribed before me this 6th day of April, 1886.

H. J. CARTER,
Deputy Clerk, U. S. Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 986. The Louisiana National Bank, garnishee, plaintiff in error and appellant, *vs.* Mrs. Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines, deceased, *et al.* No. 987. The Board of Liquidation of the City Debt, appellant, *vs.* Mrs. Hattie L. Whitney, natural tutrix of W. W. Whitney, M. G. Whitney, and Zulieme Whitney, heirs of Myra Clark Gaines, deceased, *et al.* Filed September 13, 1886.

121-284

UNITED STATES SUPREME COURT.

No. 986.

THE LOUISIANA NATIONAL BANK, APPELLANT AND PLAINTIFF IN ERROR,

vs.

MISTRESS HATTIE L. WHITNEY, NATURAL TUTRIX, AND OTHERS.

No. 987.

BOARD OF LIQUIDATION OF THE CITY DEBT,

vs.

MISTRESS HATTIE L. WHITNEY, TUTRIX OF W. W. WHITNEY AND OTHERS.

Brief for Appellants and Plaintiffs in Error.

HENRY C. MILLER,

Of Counsel for Appellant and Plaintiff in Error.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST.

UNITED STATES SUPREME COURT.

No. 986.

THE LOUISIANA NATIONAL BANK, APPELLANT AND PLAINTIFF IN ERROR,

vs.

MISTRESS HATTIE L. WHITNEY, NATURAL TUTRIX, AND OTHERS.

No. 987.

BOARD OF LIQUIDATION OF THE CITY DEBT,

vs.

MISTRESS HATTIE L. WHITNEY, TUTRIX OF W. W. WHITNEY AND OTHERS.

Brief for Appellants and Plaintiffs in Error.

STATEMENT OF FACTS.

Under the judgment recovered by Mrs Myra Clark Gaines against the City of New Orleans for a very large amount, that judgment being now on appeal to this Court and undecided, an execution was issued on May 22d, 1883, and, with a view of seizing, under that judgment, a fund of forty thousand dollars on deposit in the Louisiana National Bank, that Bank was made garnishee and cited to answer respecting the fund (Rec., p. 1). The Bank answered that the fund attempted to be seized was not subject to seizure, but had been dedi-

cated by the Legislature of the State of Louisiana, with other assets, to the payment of the bonded debt of the city, and the answers referred to the Act making this dedication, and which vested title to the fund in the Board of Liquidation, a corporation created by law to hold and apply assets not devoted to public use, to the payment of the bonded debt, the answer averring that the fund of forty thousand dollars was within the class of assets dedicated. See Act No. 133, of 1880, S. 5, Sess. Acts p. 181. Thus, in effect, the answers averred that the title to the fund was not in the City, the execution debtor, but in the Board of Liquidation. (See answer Rec. p. 6.) These answers, under the law of Louisiana, were conclusive against the seizing creditor unless traversed and disproved. (See Louisiana Code of Practice, Articles 247, 264 and 642.) On June 12th, 1883, the execution creditor filed a traverse to the answers of the garnishee averring that the fund belonged to the City and was liable for its debts. (Record p. 17.) On November 19th, 1883, the Board of Liquidation filed its interven tion (Louisiana Code of Practice, Articles 389, et seq.), in support of the answers of the garnishee, alleging the title of the Board to the fund and praying for judg ment maintaining its title to the fund. (Record p. 17.) The intervention of the Board of Liquidation was tried and submitted to the Court for its judgment on Janua ry 5th, 1884. It has never been decided by the Court. On December 14th, 1883, a rule was taken by the execution creditor upon the bank, as garnishee, to pay the fund into the registry of the Court. (Record p. 43.) The only ground suggested in the rule for taking the

especially the closing paragraph on pg

fund from the bank, in which it was deposited, was that it was necessary that the Court should reduce the fund to possession in order to determine the rights of the parties claiming it. (Record p. 43.) No action was taken by the Court on this rule from November, 1883, to February, 1886. Then, on Feb'y 7th, 1886, no decision being made on the intervention of the Board of Liquidation, or on the answers of the garnishee, both issues having been under advisement since 1884, the Court made an order that the bank should pay the fund into the Registry. Then this order was vacated (R., p. 51), the order directing that the parties in interest were to be heard by briefs within five days as to the propriety of the Court ordering the deposit of the money in the Registry. Thereafter the Court, on March 15th, 1886, rendered an order directing the bank to pay the money (less a certain sum already paid out of the fund), into the Registry of the Court. This order was made against the opposition of the Board of Liquidation, and, notwithstanding the answers of the garnishee, not set aside but standing in full force, that the title to the fund was in the Board of Liquidation and not subject to the execution of the creditor, and it was at the instance of this creditor, whose right was thus denied, that the Court ordered the bank to pay the money, the order stating the New Orleans Gas Company claiming an interest, concurred, and that the Board of Liquidation appeared resisting the order. (See Record, p. 52.) From that order the bank as garnishee, and the Board of Liquidation each took an appeal to operate as a supersedeas. As the suit in which the execution issued was in

equity, but the issue arising on the execution and the answers of the garnishee was to be determined by the provisions of the Louisiana Code of Practice, it was deemed prudent on behalf of the garnishee and the Board of Liquidation, in addition to the appeals, to sue out writs of error with bonds required for the supersedeas of the execution. These appeals and writs of error are now before this Court. So is also the main case of Myra Clark Gaines against the City of New Orleans. The motion now before this Court is by the execution creditor to dismiss these appeals and writs of error.

Assignments of Error.

1st. Under the law of Louisiana the answers of the garnishee, the Louisiana National Bank, that the fund was not subject to the plaintiff's execution but had been destined to certain uses by the Legislature of Louisiana and conveyed to the Board of Liquidation, were conclusive against the execution creditor, unless traversed and set aside by a judgment in due course, and it was error for the Court in despite of these answers, never set aside, and in despite of the Board of Liquidation whose intervention averred its title to the fund, to order the bank to pay the money.

2nd. Even if it was at all competent for the Court, under the circumstances stated, to make any order that the garnishee should pay the money, the answers standing uncontradicted and not set aside, conclusive against the seizing creditor, still there was no proof, or offer to prove, nor any suggestion even, that the fund was endangered; or any basis exhibited for the order for the

garnishee to pay the fund in his hands; and, on this ground, it was an error for the Court to order the garnishee to make the payment.

3rd. That the Court should have rendered a judgment on the traverse of the answers of the garnishee, and on the intervention of the Board of Liquidation, claiming the fund; and, without deciding these issues, it was an error for the Court to order the garnishee to pay the fund, for the payment of that fund depended upon the judgment on the traverse of the answers.

Argument.

The answers of the garnishee in this case substantially averring that the title to the fund was in the Board of Liquidation and not in the execution debtor, the remedy of Myra Clark Gaines, the seizing creditor, to traverse and have the answers set aside if she conceived the answers could be overthrown by proof, was distinctly pointed out by law, and to that remedy the seizing creditor resorted (Record, p. 17). The traverse was assigned for trial, testimony was taken, and the issue submitted to the Court on January 5th, 1884, for its judgment, and at the same time there was tried and submitted the intervention of the Board of Liquidation claiming the fund. But the Court, instead of following the course of proceeding established by law, and deciding the traverse, and adjudging the liability *vel non* of the garnishee upon its answers and the testimony produced in opposition to the answers, rendered no judgment at all, either on the traverse or on the intervention. From Jannary, 1884. to February, 1886, the traverse as well as the Intervention were held under

advisement, and never determined. And on March 15th, 1886, the Court, instead of any judgment on the traverse itself, rendered an order that the garnishee should pay the money into the Registry. This order was made upon the rule taken by the seizing creditor, whose right to the fund was explicitly denied by the answers. (See rule taken in 1883, Record, p. 17.) By the Articles of the Code of Practice the seizing creditor was put to the traverse for her remedy. The seizing creditor had no right to call on the garnishee until the answers were disputed and set aside, and it is submitted that the Court has no power under the law to substitute for a judgment on the traverse an order, unknown to proceeding against garnishees, that the money should be taken from the possession of the garnishee. It is submitted that the order was without warrant and contrary to law. See Louisiana Code of Practice, Articles 246, 247, 264, 642, Catov vs. Merril, 16th Lou. Annual Rep., p. 138.

In the brief filed here in support of the motion to dismiss, allusion is made to the bank as a trustee, and to the power of Chancery Courts to displace one trustee and substitute another. It is true that the suit of Myra Clark Gaines vs. the City is in equity, but it to execute the judgment it be conceded she can resort to the statutory remedy against garnishees, the garnishee does not thereby become a trustee, and the seizing creditor must to conform to the law governing remedies against garnishees. The bank is a garnishee, and a party to the controversy, and the fund rightfully in its hands when the garnishment process issued must remain in its hands under the laws until

judgment in due course is rendered, overthrowing its answers and adjudging that the seizing creditor is entitled to that fund.

In the order to pay the money, it is stated that the New Orleans Gas Light Company, Complainant in the suit 1044, joins with plaintiffs (i. e., the seizing creditor) in the motion. But if the seizing creditor was without right to demand the payment of this fund, it is immaterial whether or not joined by the party named in the order. The Board of Liquidation, whose right to the fund is exhibited in the answer, resisted the order and appealed from it. (See Record p. 52.)

The liability *vel non* of the garnishees to the seizing creditor was linked with the controversy between the Board of Liquidation and the seizing creditor. The law required the Court to adjudicate in one judgment on the demand of the seizing creditor and the demand of the Intervenor. The Court gave no such judgment, but undertook to determine that the garnishee should pay the money, when the question, whether the fund could be taken from the garnishee at all, was involved in the controversy, not determined, although the law required that controversy to be determined in one and the same judgment.

See intervention and order that it be filed. (Record p. 44.)

See Code of Practice, Articles 389-394.

It will be observed too that the order to take these funds from the garnishee is not supported by the suggestion of any basis on which Courts act when they rightfully give such orders. It is not pretended that the Bank is unsafe, or is there the faintest suggestion

that the fund is endangered. There was, it is submitted, no basis in law or in fact for the order.

The bank, as garnishee, had the right to maintain its lawful possession of this fund, for the Board of Liquidation, in whom the Bank's answers averred the title to be. The Board of Liquidation itself had the right to maintain the custody of the fund in the Bank. Both resisted the order and both appealed. The gratuitous suggestion in the brief of the other side that the Bank's motive is to hold on to the money, is of no pertinence. If the order to pay the money, is, as is contended, violative of the right to the fund and to its custody, the Bank is simply resisting an illegal order proposing to take from it money rightfully deposited with it. It had the interest required to appeal from the order it conceived to be illegal, and the judgment was final as to the Bank. The Board of Liquidation also had the interest and right to appeal.

It is respectfully submitted the motion to dismiss should be refused.

HENRY C. MILLER,

Of Counsel for Appellant and Plaintiff in Error.

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APPENDIX.

Extracts From the Louisiana Code of Practice.

Art. 246. If a creditor know or suspect that a third person has in his possession property belonging to his debtor or that he is indebted to such debtor, he may make such a person a party to the suit, by having him cited to declare on oath what property belonging to the defendant he has in his posssession, or in what sum he is indebted to such defendant, even when the term of payment has not yet arrived.

The person thus made a party to the suit is termed the garnishee. And whenever a party, plaintiff in a cause, has applied for a writ of *fieri facias* against the defendant, and has reason to believe that a third person has property or effects in his possession, or under his control, belong to the defendant, or is indebted to him, he may cause such third person to be cited to answer, under oath, such interrogatories as may be propounded to him touching said property and effects, or such indebtedness, in the same manner and with the same regulations as are provided in relation to garnishees in cases of attachment. Such third person shall thereupon be bound to answer in the same manner, and shall be liable in the same manner for his neglect or refusal to answer, and his answers may be disproved in the same manner as those of garnishees.

* * *

Art. 247. A creditor may likewise annex his petition interrogatories on facts and articles, to be answered categorically under oath by such garnishee, as to the nature of the property belonging to the defendant which may be in his possession, and as to the amount of the sums for which he may be indebted to him.

And in case a garnishee acknowledges himself indebted to the defendant, it shall be lawful for the Judge to order said garnishee to be held to bail in the same case as if he was the original defendant, unless he prefers depositing the money in court.

Art. 264: Although the answer of the garnishee to the question put to him be made under oath, the plaintiff may, nevertheless, show the same to be false, either by positive written proof, or by the oath of two witnesses worthy of belief, in the same manner as when interrogatories on facts and articles have been put to a party in a suit; and if it be proved by such evidence that the garnishee has in his hands property or effects belonging to the party against whose property the attachment has been granted, or that he be indebted to him in any amount, such property and effects, as well as such sum as may be due by him, shall be subject to satisfy such judgment as may be rendered against the defendant.

Art. 642. * * * * * And whenever a party plaintiff in a cause has applied for a writ of *fieri facias* against the defendant, and has reason to believe that a third person has property or effects in his possession or under his control, belonging to the defendant, or is indebted to him, he may cause such third person to be cited to answer, under oath, such interrogatories as may be propounded to him touching said property aud effects, or such indebtedness, in the same manner and with the same regulations as are provided in relation to garnishees in case of attachment and pursuant to special laws.

As to conclusiveness of garnishee's answers see:

Halpen vs. Barringer, 26th Louisiana Annual, p. 670,

Cator vs. Bank, 16th Louisiana Annual, p. 137.

Blanchard vs. Vargas, 18th Louisiana Reports, p. 488.

1st Hennen's Digest of Louisiana Decisions, p. 146, Sec. 3.

The following decisions of the Supreme Court of Louisiana sustain the title of the Board of Liquidation of the City Debt, under the Act No. 133 of 1880, to all property of the City not dedicated to public use:

Board of Liquidation vs. New Orleans, 32d Louisiana Annual Reports, p. 915.

Same vs. Same, 36th Louisiana Annual Reports, p. 524.

Acts 1880, No. 133, Secs. 1, 3 and 5; Session Acts, pp. 180, *et seq.*

Art. 389, C. P. An intervention or interpleader is a demand by which a third person requires to be permitted to become a party in a suit between other persons, by joining the plaintiff in claiming the same thing, or something connected with it, or by uniting with the defendant in resisting the claims of the plaintiff, or, where his interest requires it, by opposing both.

Art. 394, C. P. The judge cannot refuse to admit an intervention; but he must pronounce on its merits at the same time that he decides the principal action. If the demand be not sustained, the person intervening shall be decreed to pay the incidental costs.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 986.

THE LOUISIANA NATIONAL BANK, GARNISHEE, PLAINTIFF IN ERROR AND APPELLANT.

versus

MRS. HATTIE L. WHITNEY, NATURAL TUTRIX OF W. W. WHITNEY, M. G. WHITNEY AND ZULIME WHITNEY, HEIRS OF MYRA CLARK GAINES, DECEASED, ET ALS.

No. 987.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, APPELLANT,

versus

MRS. HATTIE L. WHITNEY, NATURAL TUTRIX OF W. W. WHITNEY, M. G. WHITNEY AND ZULIME WHITNEY, HEIRS OF MYRA CLARK GAINES, DECEASED, ET AL.

THOMAS J. SEMMES,
ALFRED GOLDTHWAITE.
Solicitors for Mrs. Whitney and James Y. Christmas, Natural Tutrix and Natural Tutor, Defendants in Error.

T. H. Thomason, Printer, No. 36 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES

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MRS. HATTIE L. WHITNEY, NATURAL TUTRIX OF W. W. WHITNEY, M. G. WHITNEY AND ZULIME WHITNEY, HEIRS OF MYRA CLARK GAINES, DECEASED, ET AL.

And now come the appellees and defendants in error, Mrs. Hattie L. Whitney, natural tutrix of her

minor children, W. W. Whitney, M. G. Whitney and Zulime Whitney; and James Y. Christmas, natural tutor of his minor children, W. W. Christmas, Rhoda B. Christmas, and James M. Christmas, in the above numbered and entitled causes, by their solicitors, and move this Honorable Court to dismiss the appeals and writs of error taken by the Louisiana National Bank and by the Board of Liquidation of the City Debt from the United States Circuit Court for the Eastern District of Louisiana, and filed in this Court September 13th, 1886, for the reason that no final judgment has been rendered in said cause. But, if the Court should think otherwise, then movers join with their motion to dismiss a motion to affirm, on the ground that, although the Record may show that this Court has jurisdiction, it is manifest that the writ of error and appeal were taken for delay only, and that the question, on which the jurisdiction depends, is too frivolous to need further argument.

This motion will be submitted to the Court on Monday, April 11th, 1887, at 12 o'clock M.

THOMAS J. SEMMES,
ALFRED GOLDTHWAITE,
Solicitors for Defendants in Error.

Movers submit the following statement of facts contained in the Records, Nos. 986 and 987, and brief in support of their motions:

On the 22d day of May, 1883, in the case of Myra

Clark Gaines vs. City of New Orleans, No. 8825 on the docket of the United States Circuit Court for the Eastern District of Louisiana, a writ of *fieri facias* was issued from the Clerk's office against the City of New Orleans for one million nine hundred and twenty-five thousand six hundred and sixty-seven 83-100 dollars, with interest on nine hundred and fifty thousand one hundred and ten ($950,110) dollars, at the rate of five per cent. per annum from the 10th of January, 1881, until paid; and the further sum of $34,000, with interest thereon at five per cent. from January 10, 1881, until paid, and costs of suit. Tr., pp. 1-2.

On the 29th of May, 1883, a supplemental petition was filed in said suit No. 8825, and the Louisiana National Bank, B. T. Walshe, City Treasurer, and individually, and W. J. Behan, Mayor of the City of New Orleans, and individually, were made parties to said suit, and cited to answer under oath, interrogatories propounded in garnishment proceedings. Tr. p. 3.

Joseph H. Oglesby, President of the Louisiana National Bank, in answer to the 4th interrogatory in behalf of the Bank, admitted having in bank the sum of $40,000 deposited, which had been received by the City of New Orleans from the Louisville & Nashville Railroad Company, under an agreement with the City of New Orleans, that the city would ratify and confirm certain grants to the New Orleans, Mobile and Chattanooga Railroad Company, by the Acts of the Louisiana Legislature, No. 26 of 1869, and No. 31 of 1870, and

other acts of certain batture property of the city, and should acquiesce in a judgment rendered by the Circuit Court, maintaining said grants in the suit of The New Orleans, Mobile and Texas Railroad Company vs. The City, and dismiss the appeal taken by the city from the said judgment then pending in this Honorable Court. The appeal has since been dismissed. See Board of Liquidation vs. L. and N. R. R., 109 U. S. 221; Tr. pp. 7–8; Testimony of J. H. Oglesby, Tr. 19-20-21.

On the 17th of December, 1883, the solicitors of complainant moved the Court, that the $40,000 admitted by the Louisiana National Bank to be in its possession, deposited by the Treasurer of the City of New Orleans, to the credit of the general fund of the city, should be paid into the registry of the Court, there to remain subject to the further order of the Court. Tr. 43. On the 14th day of December, 1883, the Board of Liquidation filed, by leave of the Court, an intervention and third opposition claiming the $40,000 in the Louisiana National Bank. Tr. 44-45-46.

The motion to pay the money into Court was argued by counsel, and submitted on January 5th, 1884, and on February 17th, 1886, an order was entered making the rule absolute, granting the motion, and requiring the Louisiana National Bank to forthwith pay into the registry of the Court the sum of forty thousand dollars, less the amount decreed to be paid to Mrs. Sarah M. King, Executrix of Succession of W. W. King. Tr. 51. This order was on the 19th February,

1886, vacated, and parties were allowed five days to file briefs. Tr. 51-2. Subsequently, the motion was allowed, and the Louisiana National Bank was ordered to deposit, within five days, in the registry of the Court the aforesaid sum of forty thousand dollars in the hands of the said, The Louisiana National Bank, deposited by the City of New Orleans, specially to be retained under an agreement between the City of New Orleans and The Louisville and Nashville Railroad Company, less the amount heretofore paid out of said fund to Mrs. Sarah M. King, Executrix of the estate of W. W. King. Tr. 52.

From this order a *writ of error* and an appeal to be a *supersedeas*, and to stay execution of said *final* decree, were allowed to the Louisiana National Bank, upon the Bank executing a bond in each case, according to law, in the sum of ten thousand dollars. Tr. 53, 45-6.

Subsequently, on the 25th day of March, 1886, an appeal to be a *supersedeas* was allowed to the Board of Liquidation of the City Debt, upon the said Board of Liquidation of the City Debt furnishing a bond and surety in the sum of ten thousand dollars, conditioned as the law directs. Tr. 56. On the 25th day of March, 1886, was filed with the bond, the copy of petition filed in the Civil District Court, Parish of Orleans, Division B, in the Succession of Myra Clark Gaines, No. 13,115, of Mrs. Hattie L. Whitney, as the mother of the minor children, William Wallace Whitney, Myra Gaines

Whitney and Zulime Whitney, their natural tutrix, qualified according to law, and joined in the petition with her was James Y. Christmas, as the father of his minor children, William Wallace Christmas, Rhoda B. Christmas and James M. Christmas, and as their natural tutor, qualified according to law. The said minor children, Whitney and Christmas, being the sole heirs-at-law of the late Myra Clark Gaines, Hattie L. Whitney, as natural tutrix, and James Y. Christmas, as natural tutor, asked to be authorized to administer the Succession of the late Myra Clarke Gaines. An order was made thereon by W. T. Houston, Judge, authorizing the said Hattie L. Whitney and James T. Christmas, in their capacities of natural tutrix and natural tutor of their minor children, to administer upon the Succession of Mrs. Myra Clark Gaines. Tr. 58-9.

A bond for writ of error of Louisiana National Bank, with Joseph H. Oglesby, as surety, was filed March 24th, 1886. Tr. 54-5.

An appeal was granted to the Louisiana National Bank, March 25th, 1886. Tr. 55-6.

A bond for appeal of Louisiana National Bank, with Joseph H. Oglesby as surety, was filed March 29th, 1886. Tr. 59-60.

An appeal was granted to the Board of Liquidation, March 25th, 1886. Tr. 56.

A bond for appeal of Board of Liquidation of the City Debt with Joseph H. Oglesby, as surety, was filed March 25th, 1886. Tr. 56-7.

A writ of error was filed March 24th, 1886, and a copy thereof was lodged by the Louisiana National Bank, plaintiff in error, for Hattie L. Whitney, tutrix of the heirs of Myra Clark Gaines; James Y. Christmas, tutor of heirs, and other defendants in error named in the writ. Tr. 60-1.

BRIEF IN SUPPORT OF MOTIONS TO DISMISS AND AFFIRM.

The record in these cases discloses no final judgment from which a writ of error or appeal can be brought to this Court.

The order that the Louisiana National Bank should, within five days, deposit in the registry of the Court, subject to the further order of the Court, the sum of forty thousand dollars in the hands of the said Louisiana National Bank, found in Transcript, p. 52, was not a final judgment, but was interlocutory only. The Bank had no interest in the money, and claims nothing.

The Board of Liquidation of the City Debt was an intervenor, but no judgment was rendered against it, or upon its petition of intervention.

Until there is a final judgment, neither the Bank nor the Board of Liquidation can appeal. Cushing vs. Laird, 107 U. S. 76.

A decree that money shall be paid into Court, or that property held in trust shall be delivered to a new trustee, appointed by the Court, is interlocutory only, and intended to preserve the subject matter in dispute

from waste or dilapidation, and to keep it within the control of the Court, until the rights of the parties concerned can be finally adjudicated, and cannot be appealed from. Forgay vs. Conrad, 6 Howard, 201.

The motion to have the money paid in the registry of the Court, was one addressed to the discretion of the Court, and belongs to that class, and when orders are entered thereon, writs of error will not lie. The City of New Orleans asserted no claim, and urges no defence. The Bank was a stakeholder or trustee only, without any right.

The sole motive of the Bank is to retain the control and use of the money.

The Board of Liquidation of the City Debt has not been condemned, nor has its claim been rejected. The appeals and writ of error should be dismissed.

Respectfully submitted,

THOMAS J. SEMMES,
ALFRED GOLDTHWAITE.

Solicitors for Mrs. Whitney and James Y. Christmas, Natural Tutrix and Natural Tutor, Defendants in Error.